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UNITED STATES SENATE.

IN THE MATTER OF THE APPOINTMENT

—OF—

ORLANDO W. POWERS

To the Associate Justiceship of the Territory of Utah.

OBJECTIONS TO CONFIRMATION.

EDWIN F. CONELY,

Attorney for Objectors.



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KALAMAZOO, Mich., Dec. 5, 1885.

HON. GEO. F. EDMUNDS,

Chairman Judiciary Committee, U. S. Senate.

SIR:

I have the honor to submit herewith a protest and supporting proof against the confirmation of Orlando W. Powers, of this city, to be Associate Justice of the U. S. Court in the Territory of Utah, to which position he has been appointed by the President.

For reliable information as to the character and standing of the gentlemen who have signed this protest, I respectfully refer you to the entire Michigan delegation in Congress, and particularly to the Hon. J. C. Burrows, who is the representative from this district. Reference is also made to Mr. Harry H. Smith, journal clerk of the House of Representatives, who is well acquainted with the signers of the protest, and with the main facts, also, on which the protest is based:

Permit me a few words of personal explanation as to my relations to this matter.

I am a Democrat, and as you are aware, was the last to be elected as such to the U. S. Senate from this State. I have no personal acquaintance with the President, but as his political friend and supporter, I sought to save him from the serious mistake of continuing such a man as O. W. Powers in the position to which he had been appointed. Within three days after Powers' appointment was announced by the newspapers, and long before the certificate of appointment was issued, I sent to the President, by a special messenger and at great cost to myself, a private letter, in which I fully informed the President of the total unfitness of this man for such a place, and tendered him proof, if he desired it, in support of my estimate of his character.

To this letter I have never received any reply, nor any other evidence that he gave it serious consideration.

Dec. 1947

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I fully believe that Mr. Cleveland desires to appoint none but honest and honorable men to office, especially to a high judicial office; and so believing, his course in this matter, is to me inexplicable, except on the assumption that he has been grossly deceived and misled by persons ignorant of the facts or interested in their suppression.

It is openly asserted in Michigan, and never denied that Don M. Dickinson, of Detroit, is responsible for this appointment. Why he should be so, if it be true, I can not understand. Mr. Dickison has neither official position, statesmanship, political experience or influence that entitles him to such overmastering influence with the appointing power, especially in opposition to the wishes of those chosen by the people to represent them, and still more especially in the face of such damning facts as are contained in the proof herewith submitted.

I hardly deem it necessary to say that my action in this matter has been dictated solely and purely by a desire to promote the welfare of the public service, the purity of the judicial office, and the honor of Mr. Cleveland's administration.

Very Respectfully,

CHAS. E. STUART.

TO THE HONORABLE,

*The Judiciary Committee
of the Senate of the United States:*

The undersigned, residents of the City and County of Kalamazoo, Michigan, respectfully protest—

That the appointment of Orlando W. Powers, of this city, to the high, honorable and responsible position of Justice of the United States Court in the Territory of Utah, is one not fit to be made and should not be confirmed by the Senate of the United States.

In support of this protest we respectfully submit

the accompanying proof that, both personally and professionally, he is a dishonest and dishonorable man.

CHAS. E. STUART.
FOSTER PRATT.
N. H. STEWART.
J. M. EDWARDS.
S. S. COBB.
A. T. METCALF.
H. C. POTTER.
T. S. COBB.
WM. MOTTRAM.

KALAMAZOO, Mich.,

December 15, 1885.

HON. N. G. BALCH,

President of the Bar Association of Kalamazoo County:

Sir:

I deem it an imperative duty to call your personal and official attention to a very grave offence recently committed by Mr. O. W. Powers, one of our members.

The facts and circumstances of the case, as I learn them, are substantially these :

The trial of the case of Newcomer vs. Vandusen, in the Circuit Court for this County, which had occupied several weeks, had just closed and Judge John B. Shipman, who had presided therein, was in the council room at the Court House, conversing with some gentlemen of the Bar, and among others Mr. Lockwood. While so engaged, Mr. Powers, who was attorney and council for the plaintiff in the case, came into the room, interposed in the most abrupt and rude manner between the Judge and Mr. Lockwood, and addressing the Judge, said in substance: " Well Judge, you and I are on an equal footing now. I thank God that our side did not send for you; we didn't want you; the other side wanted you, sent for you, and got you; they had you and they have used you and now you can go home," and it is alleged that he used other language of like character and import.

This language contained within itself the most conclusive evidence of a deliberate and studied purpose to perpetrate the grossest insult possible; for it directly and unequivocally charged upon Judge Shipman the highest of judicial crimes. But if any question of intent could be extorted from it, Mr. Powers has himself confirmed it in his subsequent communication to the *Kalamazoo Telegraph*.

Let me now state briefly, Mr. President, some of the reasons which in my judgment add to the enormity of this offence. The case was an important one and had attracted the attention of the public generally. It had once been tried before Judge Hawes, resulting in a large verdict and judgment for the plaintiff.

On a review, the Supreme Court had reversed the judgment and ordered a new trial. It was under such circumstances that Judge Hawes, with a disinterested magnanimity and a high and delicate sense of judicial dignity and impartiality, and of his own motion, invited Judge Shipman to preside at the second trial. The acceptance of that invitation by Judge Shipman constituted the highest act of judicial courtesy that can occur under the laws of this state; and it made him on his arrival here, the honored and distinguished guest of the people of this County, but more especially and emphatically, the guest of Judge Hawes and the Bar. To even permit an indignity or insult to him in the presence of one of our citizens, without an effort by that citizen to prevent it, would be a gross discourtesy. If that citizen were a member of our Bar, it would be answerable, and consequently, when committed by such members, it constitutes one of the grossest professional offences known to our jurisprudence.

The question then is, can our Bar, if it would, overlook this offence, or omit or forbear to inquire into it, and if proven punish the offender, without being held, and properly so, by an enlightened public as countenancing and approving the act.

It seems very clear to me that we cannot. The charge by Mr. Powers that "the other side" brought Judge Shipman here, was known by Mr. Powers and

every other lawyer to be utterly false, because it was impossible. Only by the official request of Judge Hawes could Judge Shipman preside at that trial. Had his charge of bribery been true it would have been good cause for legal impeachment, while it would furnish no shadow of excuse for a personal insult. But it was not true, nor has any sane and honest man the slightest reason to suppose it true. I have known Judge Shipman for many years, have practiced law in the same court with him, and can testify to his high character and standing as a lawyer and gentleman. He had presided here in that trial with such marked ability and commendable patience as to command and actually receive the approval of the counsel of both parties in the case, and most favorable mention in both of our daily papers. His final disposition of the case displeased Mr. Powers, and instead of conducting himself with the dignity and propriety which characterized the action of his associates in the case, Mr. Powers resorted to personal insult and gross and false defamation; while they, like good lawyers and perfect gentlemen, took the necessary steps to prepare their case for future review, though they were doubtless as much disappointed as he at the result. Mr. Powers descended to the low level of the common blackguard; he therefor not only acted in gross violation of all rules of professional courtesy and gentlemanly conduct, which should have restrained and controlled him, but also against the wishes of his associate counsel there before him, and hence the gross offence he committed is without excuse or palliation. I therefor most respectfully request you to call a meeting of our Association, with as little delay as possible, in order that this offence may be promptly inquired into and punished to the full extent authorized by the settled customs and usages of our profession and the laws of this State.

We have several gentlemen at our bar whose learning, high character and ability have won for them a reputation not limited by the boundaries of our State; they cannot afford to silently permit this stain to remain upon the general character of our bar. There are several others, who, if second to them, are only so in

age and experience and therefore equally interested. There are several younger still who have but just crossed the threshold of the temple of justice, before whom we cannot permit this pernicious example to remain, if we intend to protect, defend and perpetuate the purity of our profession.

CHAS. E. STUART.

Kalamazoo, Dec. 10, 1870.

Having been informed of the facts set forth in the foregoing statement, I concur in the application made, and trust that no time may be lost in determining the truth or falsity of the very gross charge made against Mr. Powers. If guilty thereof, no doubt can exist of what must be done.

GERMAIN H. MASON.

We think the foregoing matter demands investigation and action on the part of the bar of the county.

H. C. BRIGGS.
DALLAS BOUDEMAN.
DWIGHT MAY.
J. W. BREESE.
E. M. IRISH.
J. M. EDWARDS.
ROBERT BURNS.
VOLNEY H. LOCKWOOD.
J. DAVIDSON BURNS.
ROBERT F. HILL.
N. H. STEWART.
H. G. WELLS.
CHAS. S. MAY.
E. H. RANNEY.
WILSON B. FULLER.
JAMES M. DAVIS.
R. F. JUDSON.
OSCAR T. TUTHILL.
I. N. WATTLES.
FRANK E. KNAPPEN.

I believe some general action of the bar should be taken with reference to the action of members in their intercourse with the courts and each other.

WILLIAM SHAKESPEARE.

In explanation of the request upon the Hon. N. C. Balch to call a bar meeting to take action upon the conduct of Mr. O. W. Powers toward the Hon. John B. Shipman under the paper writing hereto attached, I wish to say, after the said request, a true copy of which is hereto attached, had been signed by 22 of the members of the Kalamazoo County bar as hereinbefore shown. An investigation was made for the purpose of ascertaining just what powers, if any, the Bar Association of this county possessed, and what was the best method to pursue. That such investigation developed the fact that the said association as it then stood under the decisions of our Supreme Court in relation to such actions as to members, it would not be safe to take proceedings for such an offence under it. And for the purpose of organizing a Bar Association under the statutes and laws of the State, the President, Mr. Balch, of the old association, resigned, and in consequence of the delay that occurred, and for various other causes that happened between that time and the organization of the new association, no action was taken upon the matter.

The infirm condition of my own health prevented me from pursuing the subject with that vigor which I otherwise should have done, and hence Mr. Powers so escaped the punishment he so richly deserved.

CHAS. E. STUART.

STATE OF MICHIGAN, }
 } ss.
 Kalamazoo County. }

Emily Mason, being duly sworn, deposes and says that she is thirty-two years of age and has been a resident of Kalamazoo, Michigan, for nineteen years and

upwards; that she is personally acquainted with Orlando W. Powers, formerly a member of the Kalamazoo bar, and at present Associate Justice of the Supreme Court of the Territory of Utah.

Deponent further says that she is a granddaughter of Anthony Mason, deceased, who was a resident of Orleans County, New York, and departed this life at said county a short time prior to 1878, leaving this deponent, as an heir of his estate, a certain legacy, a portion of which was paid to deponent by and through the representatives of his estate, O. D. Mason and George Ressigne, and that in the month of April, 1878, there was an unpaid balance of such legacy in the hands of said representatives of \$934.65, a portion of which was secured by mortgage and the balance of \$483.50 in money, which this deponent was desirous of collecting.

Deponent further says that in order to do so, on or about said month of April, 1878, she employed the said Orlando W. Powers, professionally, and upon his request gave him a power of attorney to collect and receipt for such money; that it was then understood between deponent and said Powers that whatever was due deponent could be collected without difficulty and delay, as said estate was involved in no litigation or complications, and all that was required to be done was the signing of proper receipts by the legatee or a properly authorized person; and the place of settlement of said estate being near where his parents resided in the State of New York, whom he visited occasionally, and was desirous of doing so soon thereafter, all the charge he would make against deponent for the services required to be rendered by him in said matter would be simply his travelling expenses to and from Kalamazoo to Medina, N. Y., upon such occasions as he might be required to go there for the purpose of collecting said legacy.

Deponent further says that during the time between such employment and the 1st day of January, 1879, she saw the said Orlando W. Powers quite frequently at Kalamazoo, aforesaid, and asked him if said legacy had been collected by him, to which he always replied that it

had not; that there were some difficulties in the way and that the same had not yet been paid over to him.

Deponent further says that she discovered about this time a great disposition on his part to avoid her, and upon going to his office, as she did on several occasions, she was informed by the person in charge thereof that said Powers was out, and that it was impossible for her to see him, and becoming somewhat alarmed in consequence of his singular conduct and refusal to give her any satisfaction in regard to the collection of said legacy, she sought to obtain such information from other sources, and for that purpose wrote the surrogate of said Orleans County, and received in reply thereto the letter which is hereto attached and marked "Exhibit One." That in pursuance of the information contained in said "Exhibit One," she wrote said George Ressigne the letter which is hereto attached and marked "Exhibit Two," and received in reply thereto "Exhibit Three," hereto attached.

That said matter not being made exactly clear to deponent by said "Exhibit Three," she addressed another letter to the said Ressigne and received in reply thereto "Exhibit Four," hereto attached, and that in pursuance of the statement in "Exhibit Four" contained, deponent wrote to said Childs & Pitts and received in reply "Exhibit Five," hereto attached, and a few days thereafter received from the said George Ressigne "Exhibit Six," hereto attached, and which said "Exhibit" inclosed the statements attached thereto and marked "Part of Exhibit Six."

Deponent further says that from the information obtained from the Exhibits hereto attached, she concluded it was to her interest to employ other counsel, and she did thereupon employ Mr. Dallas Boudeman, of Kalamazoo, Michigan, who caused to be addressed to said Ressigne a letter, a copy of which is hereto attached and marked "Exhibit Seven," and that in reply thereto was received "Exhibits Eight and Nine," hereto attached.

Deponent further says that after obtaining the above information that said legacy had been collected and received by said Powers, she again called at his office on several occasions for the purpose of interviewing him in

regard thereto, and upon each occasion was informed by the person in charge that he was out, and that she was unable to get such desired interview until after having accidentally met him in the post office, and insisted that she should be allowed the same, when he agreed to meet her soon thereafter at his office, which she did, and confronted him with the evidence she had of his having collected said legacy and falsified in regard thereto; whereupon he then and there stated to this deponent that he had deceived her and falsified to her; that it was true that he had collected said legacy and spent the money, and begged her not to expose him or institute criminal proceedings against him, as either would ruin his reputation; and further stated that he had a friend who would assist him, and that if deponent would not prosecute or expose him he would borrow the money of his friend and pay her every cent due her.

Deponent further says through her attorney, Mr. Boudeman, she succeeded in recovering from said Powers the sum of two hundred and ninety-two and 40-100 dollars, and for the balance which he allowed as due, to-wit, \$40.98, he subsequently, on the 13th day of December, 1879, before L. N. Burke, a justice of the peace of the Township of Kalamazoo, confessed judgment, and which judgment still remains unpaid, except \$20 paid thereon by his honor, on or about September 14, 1885, and further deponent saith not.

EMILY MASON.

Subscribed and sworn to before me, this 13th day of October, 1885.

HENRY W. BUSH,

*Notary Public, in and for Kalamazoo
County, Michigan.*

[EXHIBIT ONE.]

ORLEANS COUNTY, }
 Surrogate Court. } ss:

Albion, N. Y., June 9, 1879.

EMILY MASON,

Kalamazoo, Michigan.

Madam:

In answer of yours of December 31, 1878, I would say that in the final settlement of Anthony Mason's estate you were allowed \$1,448.33, how much of this has been paid I am unable to ascertain by the papers filed in this office. You would probably do better in addressing George Ressigne or Oliver D. Mason, administrators of said estate, Yates, Orleans Co., N. Y.

Respectfully,

E. W. TAYLOR.

P. S.—In looking over the accounting made by the administrators, I find that \$75.83 was advanced you for interest. Now, then, your due will be the amount after deducting the payments made, together with the \$75.83 from the \$1,448.33, will leave you your due.

Yours, Etc.,

E. W. T.

[EXHIBIT TWO.]

KALAMAZOO, MICH., Jan. 14, 1879.

TO MR. GEORGE RESSIGNE,

Orleans County, N. Y.

Sir:

Will you please inform me just the situation of my interest in the estate of Anthony Mason, deceased, how much has been paid and to whom, and how much remains unpaid, and when is it due, and what is the reason

it is not paid. I expected it to be paid this last fall. Please write and tell me all you know about it.

Yours in haste,

Address: Miss EMILY MASON,
Kalamazoo, Mich.

[EXHIBIT THREE.]

NORTH RIDGEWAY, Jan. 29, 1879.

MISS EMILY MASON.

Dear Madam:

This was received yesterday in regard to the Mason estate. They are all paid off but you, and I have receipts in full. There is a mortgage of \$450 principal and \$31.50 interest, that belongs to you and due next December 29, just 11 months from to-day, and probably will be paid. I wanted to assign to you, but your attorney, Powers, did not see fit to take it. That would be the best way, as our surrogate has set off that mortgage in our settlement for you. Will assign to you any time.

If you ever wish to write me again, address North Ridgeway, N. Y.

G. RESSIGNE.

[EXHIBIT FOUR.]

NORTH RIDGEWAY, Feb. 15, 1879.

MISS EMILY MASON.

Dear Madam:

In answer to yours, will say the mortgage is a second mortgage, but just as good as gold. If it is ever sold on yours, I will buy it quick, and so would plenty of others; \$2,000 ahead on 107 acres, worth from \$90 to \$100 an acre, makes the \$450 good enough I think. In the final settlement there was just \$969.65 your due, and all paid but the \$450; and all been paid to Powers.

You can write Childs & Pitts, atttorneys-at-law, Medina, Orleans County, N. Y., and they will send you the exact amount paid Powers, as they have his receipts.

Yours, etc.,

G. RESSIGNE.

[EXHIBIT FIVE.]

Law Office of Childs & Pitts,

MEDINA, ORLEANS COUNTY, N. Y.,

February 19, 1879.

MISS EMILY MASON:

Your favor of the 17th inst. came duly to hand.

We cannot state the amount of money paid to Powers. The payments have all been made by Mr. Ressigne, and we supposed he had recently sent you a statement of the amount.

We have not in our possession any power of attorney given by you to Powers.

Respectfully yours,

CHILDS & PITTS.

[EXHIBIT SIX.]

NORTH RIDGEWAY, Feb. 22, 1879.

MISS EMILY MASON.

Dear Madam:

I was in Medina yesterday, and Mr. Pitts gave me the amount paid O. W. Powers for your account, which I will enclose. The \$483.50 is the amount we paid him and there is now your due in the Oatman mortgage \$450, and interest from 29th December, 1877, and we have assigned it to you and left it in the hands of Childs & Pitts. You send your receipt in full to them, and they will collect the money for you and send it along to you; if you wish to write the man who gave the mortgage, address Peter Oatman, Oak Orchard, Orleans

County, N. Y., and it will reach him. Please send us receipt in full, as we want our discharge, and can get it as soon as we get your receipt.

Yours, etc.

G. RESSIGNE.

[PART OF EXHIBIT SIX.]

\$483.50, amount paid to Powers for Emily Mason.

CHILDS & PITTS.

[EXHIBIT SEVEN.]

Law Office of Dallas Boudeman,

KALAMAZOO, MICHIGAN, Feb. 21, 1879.

MR. G. RESSIGNE,

Ridgeway, N. Y.

Dear Sir:

Miss Emily Mason has brought me some letters from yourself and Messrs. Childs & Pitts, of Medina, and wished me to drop you a line in reference to the same, making some further inquiries.

It seems that Mr. Powers has claimed all along that all of her money was in mortgage, etc., and he has not paid her any. Now I wish you would let me know to whom the \$450 mortgage, which you mentioned in your letter of Jan. 29, 1879, runs. Is it to you as administrator or to Anthony Mason? How does it come that the mortgage, instead of the cash, goes to her? How can this mortgage be assigned to her, and are you willing to so assign the same? Has there been any order of your Surrogate Court, directing that this mortgage should be turned over to Miss Mason as a part of her legacies? The surrogate wrote Miss Mason, Jan. 9, 1879, that there had been allowed her \$1,448.88. Of this, he says \$75.83 was advanced to her. This would still leave \$1,373.50. You say that in the final settlement there was her due \$969.65, and all been paid except the mort-

gage of \$450. Now does this \$969.65 include the \$450 mortgage; if not, what has become of the difference between \$969.65 and \$1,373.30? Please write me fully all about this, as Miss Mason wishes to get a settlement with Mr. Powers, and desires to know just how it stands.

I wish you would write me also whether Mr. Powers had any power of attorney from her, and, if so, he left it with you; also tell me just how much you paid Powers, in cash, and how much in any other way; has Mr. Powers this \$450 note and mortgage in his possession. You wrote Miss Mason to write to Childs & Pitts, and they would tell all about it. She wrote to them and they replied saying that they cannot state the amount of money paid Powers, that the payments have all been sent to you. Be so kind as to give this your immediate attention, and answer me these numerous questions which I have asked, so that Miss Mason will have a full and complete statement of affairs. If there is anything that Childs & Pitts can help you on, please see them and give me a full statement.

Yours respectfully,

DALLAS BOUDEMAN.

[EXHIBIT EIGHT.]

NORTH RIDGEWAY, Feb. 26, 1879.

MR. DALLAS BOUDEMAN,

Dear Sir:

Yours was duly received. Will answer you briefly. One year ago the 16th of last April we settled the Mason estate before the surrogate and found \$1,373.50 due Emily Mason. I had paid her \$600 before. I sent \$500 immediately after, through the hands of J. W. Breese, leaving \$873.50. Just one year from that day, April 16, 1878, or last 16th of April, I had a final settlement with the other administrator, O. D. Mason, her uncle, and found \$934.65 her due, instead of \$969.65 as I wrote her from memory. Hadn't seen the figures since last May or June. I think in June I paid Powers,

through her power of attorney, \$160 cash; the 5th of September following \$323.50 more in cash, all that is her due except the Oatman mortgage of \$450 and back interest. The 5th of September, we had E. L. Pitts, one of our lawyers in the case, draw an assignment of the mortgage to her, and I and Mason both signed it to give to Powers and then he did not think Miss Mason would take it. I urged him to accept it and sign receipt in full, so that would close the whole thing before the surrogate, as this is the final. All the rest are paid off in full. If Miss Mason had left her matters with Mr. Breese she would have been all right. If Powers has not paid over the \$483.50 in money to Miss Mason, he is wronging your State's institution every hour that he is out of it, and if you want any help from me to bring the scoundrel to justice, you can have it. We have the power of attorney from Miss Mason.

Yours, &c.,

G. RESSIGNE.

P. S.—The Oatman mortgage runs to me and O. D. Mason. as administrators, &c., and is good.

[EXHIBIT NINE.]

NORTH RIDGEWAY, March 6, 1879.

MR. DALLAS BOUDEMAN,

Dear Sir:

Yours was duly received, and in reply will say that I paid Powers the first \$160 and 47-100 in check on the Union Bank of Medina. I was in Medina Monday and had calculated to see the date of the check but forgot to do so; gave him the check in Childs & Pitts' law office. The 5th of September last we paid him in money in their office and Pitts took the receipt, \$323.50, making in all, in money, \$483.50, for which he gave receipts in Miss Mason's name. He would have taken the mortgage under assignment in his own name, and probably would have sold that and put the money in his own pocket. Our laws here would warn him and I hope yours

will. In relation to the mortgage—it becomes due the 20th of December next, and unless Miss Mason is pushed for money she had better hold on than stand a loss on it, and there would be some in selling the mortgage. If not paid on maturity it will be closed and sold, and I will bid it in for myself and pay her the money. I leave home next Tuesday morning to be gone a week or two. If you want anything more you write on receipt of this and I will get it Monday night.

Yours, etc.,

G. RESSIGNE.

STATE OF MICHIGAN, }
KALAMAZOO COUNTY, } ss.

In Justice Court, before Lawrence N. Burke, a Justice of the Peace, in and for the Township of Kalamazoo, in said County.

To Lawrence N. Burke, Esq., one of the Justices of the Place, in and for the Township of Kalamazoo, in said County.

Sir:

I hereby confess that I am indebted on contract to Emily L. Mason in the sum of forty and 98-100 dollars, and you are hereby authorized to render judgment against me and in her favor for that sum, with costs.

O. W. POWERS.

Dated December 13, 1879.

Signed in my presence in open court this 13th day of December, A. D. 1879.

LAWRENCE N. BURKE,

Justice of the Peace.

EMILY L. MASON }
vs. }
ORLANDO W. POWERS.

On this, the 13th day of December, 1879, personally appeared before me in open court, Wilson B. Fuller,

claiming to represent Emily L. Mason and Orlando W. Powers, in person. The defendant, Orlando W. Powers, confesses in writing signed by him in my presence, in open court, that he is indebted to the plaintiff, Emily L. Mason, on contract, in the sum of forty and 98-100 dollars. Whereupon, by consent of the said plaintiff and on request of the defendant, it is adjudged and determined that the plaintiff recover of the defendant the sum of forty and 98-100 dollars, and costs of proceedings, taxed at \$1.00.

LAWRENCE N. BURKE,

Justice of the Peace.

June 26, 1885.

I issued execution by order of plaintiff's attorney, D. Boudeman.

L. N. BURKE, J. P.

Execution returned unsatisfied August 25, 1880, by Henry J. Brownell.

L. N. BURKE, J. P.

Received twenty dollars on the above, September 14, 1885.

EMMA MASON.

By H. W. BUSH, Her Attorney.

STATE OF MICHIGAN,

Kalamazoo County,

} ss:

H. C. Potter, of the City and County of Kalamazoo, in said State of Michigan, being duly sworn, deposes and says, that he is Under Sheriff of said County of Kalamazoo, also that he is the managing partner of the Michigan Scale Company, located in said City of Kalamazoo.

Deponent further says that the paper writing hereto attached, purporting to be a copy of a judgment against O. W. Powers, is a true and correct one, and all thereof, of a judgment in justice docket number one of Law-

rence N. Burke, a Justice of the Peace, in and for the Township of Kalamazoo, in said County and State, in the year A. D. 1879, at page one hundred and seventy of said docket, and that said copy was carefully and accurately compared by this deponent with said docket entry, and that the same is true and correct.

And further deponent says not.

H. C. POTTER..

Subscribed and sworn to before me, this 4th day of December, A. D. 1885.

CHAS. E. MONROE,

Notary Public,

Kalamazoo County, Michigan.

STATE OF MICHIGAN,

Kalamazoo County,

} ss.

J. M. Edwards, of the City of Kalamazoo, in said County, being duly sworn, deposes and says that he is an attorney and counsellor-at-law of more than thirty years' practice in the courts of Michigan, both state and federal.

And he further says that he knows Orlando W. Powers, recently appointed from this City to a United States' judgeship in the Territory of Utah, by President Cleveland, and that he has known said Powers for ten years and upwards, and since he first came to reside in Kalamazoo.

And deponent further says that he well knew the Hon. Allen Potter, now deceased, in his lifetime, from the year 1848 to the time of his death, which occurred in May, 1885, during which period he was a resident of Kalamazoo; that said Potter, in the fall of 1874, from this the 4th district of Michigan, was elected as representative in Congress, taking his seat in Congress in December, 1875, and serving one term.

Deponent further says that the personal relations between himself and said Allen Potter for the last thirty years of Potter's life were quite intimate and confidential,

that after his term in Congress had expired and his return home, and within the year following the expiration of his congressional term, as near as deponent can state the time, said Potter, as deponent on one occasion was passing his residence, called to deponent, expressing a wish to talk with him; that deponent, so invited, walked up the front steps and took the proffered seat, where Potter was seated in the front portico of his house; that said Potter then said to deponent that he believed he had not yet told him (deponent) of a transaction between himself and said O. W. Powers, and he wished now to inform deponent of such a transaction, in which he said he had been grossly swindled by Powers.

And deponent further says that then and there Mr. Potter stated to him substantially as follows: That shortly before he left Kalamazoo for Washington to take his seat in Congress he was interviewed by said Orlando W. Powers, and was by him solicited to take stock in a company then, as said Powers represented, being got up for publishing and conducting a newspaper in Kalamazoo, democratic in politics; that said Powers represented to him that said company was to be organized with a capital stock of \$12,000; that \$6,000 of the stock was to be taken by the editor and publisher of the *Kalamazoo Gazette*, of Kalamazoo, one A. J. Shakespeare, and the balance, \$6,000, would be taken by various democrats, many of whom had given assurance that they would subscribe to said stock; that the scheme was being pushed with vigor by earnest democrats, with every prospect of success; and that he, Powers, when the new paper should be issued, would be its political editor; that he, Potter, being urged by Powers to subscribe to the stock, said to him shortly before he left for Washington, that he would not subscribe then, but wait, and would take the last \$1,500 of unsubscribed and unpaid stock of such company when its organization should be fully perfected and its officers appointed; and if that point in the organization of such company should be reached before his (Potter's) return from Washington, he (Powers) might write to him and he would send the cash for such last \$1,500 of stock.

And deponent further says that he was then and there

further informed by said Allen Potter that soon after he reached Washington in attendance upon the session of Congress, he received a letter from said Orlando W. Powers, in which said Powers stated that the stock of said democratic newspaper company had been all taken and paid, except the last \$1,500, assigned to him, Potter, that the company was organized, its officers duly elected, and that it only remained for said Potter to forward his \$1,500 to complete the organization, furnished with the means to operate it.

That said Potter further stated that upon receipt of such letter from said Powers he had no suspicion of perfidy, but believed implicitly in the truth of Powers' statements in said letter; that having about that amount of money on deposit in bank at Kalamazoo, he ordered it paid over to Powers, and it was so paid, and as he supposed that he knew it to be all right, he felt no concern for his money and no suspicion that he was being robbed by said Powers, and while he remained during that session of Congress at Washington he was untroubled with any doubt of his personal integrity.

That on his, said Potter's, return from Washington to Kalamazoo at the close of the season, he inquired after the condition and prosperity of the company, whose stock he supposed he had purchased; and then first learned that no company had been organized, no stock issued or taken, and no amount by anybody paid in contemplation of the issuance of stock, except what Powers had taken from him; in fact, he then first learned that the statements of Powers in his letter in regard to the organization of the company, the issuance of, and payment for stock, the election of its officers, on which statements he, Potter, implicitly relied and paid his money, was all a lie; that he then found he had been duped by Powers and swindled out of his money.

And deponent further says that at this point in the statement of said Potter, he interrupted Mr. Potter with the statement that though he had lost his money, he, Potter, yet had it in his power to make an example of him, and then inquired of Mr. Potter for Powers' letter. In reply, Mr. Potter said: "you think, as now I do, that I was too trusting in taking as true the statements of

Powers; but I had all confidence in his honesty, and for that reason, after reading his letter and sending him the money, I thought no more of the letter or of any special importance attached to its preservation; yet, when I reached home and found the state of things, I comprehended at once the importance of the letter, and looked for it, not doubting I could put my hand upon it, but I have not been able to find it; I have searched through my letters brought from Washington and can't find it, and I fear that with a mass of 'letters, which accumulated while in Washington, and which I burned as not worth preserving, before I left, that letter was destroyed. I have not yet given up the search, and if I can find it, I shall certainly do my duty both to Mr. Powers and to the public.

Deponent further says that he has above given substantially the language of Mr. Potter, in reply to his question asking for Mr. Powers' letter, and deponent further says he stated to Mr. Potter that, though very important, the loss of said letter was not irremediable, but that its contents might be proved, and that he himself seemed to have so very distinct a recollection of its contents; to which Mr. Potter assented, but said the contents of the letter produced, Powers could not deny, but his statement of its contents Powers would deny, and that he now realized how utterly unscrupulous and dishonest he was, and the advantage to Powers the loss of the letter would give him, and he was not without hope that he might yet be able to find it.

And further deponent says not.

J. H. EDWARDS.

Subscribed and sworn to before me this 17th day of November, A. D. 1885.

J. DAVIDSON BURNS,
Notary Public, Kalamazoo Co., Mich.

STATE OF MICHIGAN, }
 Kalamazoo County. } ss.

Foster Pratt, of the City of Kalamazoo, State and County aforesaid, being duly sworn, deposes and says that he is a physician and surgeon; that he has resided in said city nearly thirty years, and that he knows Orlando W. Powers of this city, recently appointed Associate Justice of Utah Territory, and has known him well since 1872; that he also knew Allen Potter of this city, who died early in May, 1885, and knew him well for nearly thirty years.

That the said Allen Potter was elected to the 44th Congress on a so-called "Union Ticket" in the fall of 1874, (deponent being at the time Chairman of the State Central Democratic Committee of Michigan, and holding very intimate personal and political relations with Mr. Potter, the Congressman-elect, as aforesaid.)

The deponent further says that in the fall of 1875, not long before the convening of the 44th Congress, he was informed by Mr. Potter of a movement to buy the *Gazette*, (a newspaper published in Kalamazoo, and owned by A. J. Shakespeare, lately appointed post-master of this city) and to form a joint stock company to own and conduct the said paper. That when Mr. Potter came home during the holiday recess in December, 1875, he and deponent again conferred upon the subject of buying the *Gazette*, and Mr. Potter told deponent that the *Gazette* could be bought for \$6,000, and that if \$4,500 in cash could be raised by others, he, Potter, would contribute \$1,500 more, to make a working capital of \$6,000 in cash.

Deponent having declined to engage in the enterprise, heard no more of the matter until in the summer of 1876, soon after Mr. Potter's return home after the adjournment of Congress. At this time Mr. Potter told deponent in substance as follows:

That O. W. Powers had obtained from him, Potter, \$1,500 by false pretences; that he, Potter, told Powers, before his return to Washington in the previous winter,

that if he (Powers) would obtain reliable cash subscriptions to the amount of \$4,500, secure to himself (Powers) the editorial control of the paper, and inform him (Potter) of the fact by letter at Washington, he (Potter) would send authority to the Michigan National Bank of Kalamazoo to pay \$1,500 to Powers for the purpose proposed, the stock representing this \$1,500 to be held by Powers, but to belong to him (Potter); that not long after his return to Washington he received a letter from O. W. Powers, stating that the \$4,500 of *bona-fide* subscriptions had been obtained here, and that all contemplated arrangements for the editorial and political management of the *Gazette* newspaper had been perfected, and nothing remained to consummate the transaction but the payment of the \$1,500 promised by him (Potter) on receipt of this letter, and that according to promise he wrote to Wm. C. Wood, then president of the Michigan National Bank at Kalamazoo, to pay \$1,500 to O. W. Powers, and that the money was paid.

That when Congress adjourned and he came home, he found that no such newspaper change had been made or attempted to be made, that the \$4,500 of stock alleged by Powers, in his letter, to have been taken, had not been subscribed, and that he (Powers) had taken the \$1,500 obtained of him (Potter) and converted it to his own private use.

This deponent further says that from the said summer of 1876 until Mr. Potter died, in the spring of 1885, this matter was often a topic of conversation between them, and that in all such conversations Mr. Potter never deviated from the essential details of the foregoing statement; and in the last of such conversations, after the said Powers had been appointed Justice in Utah, and not long before Mr. Potter died, he told deponent that except the interest for one year and part of another, nothing had been paid him by Powers of the moneys obtained.

And this deponent further says that the said O. W. Powers obtained in 1880, by dishonorable methods, the Democratic nomination for Congress in this, the 4th district of Michigan, and was told by several leading

Democrats, who were cognizant of the foregoing facts, that they would not support him. On this, Powers invited G. H. Mason, C. T. Metcalf, John Dudgeon, E. W. Deyer, and this deponent, all of this city, to a private interview with him at the office of G. H. Mason, for the purpose, as he alleged, of explaining his conduct in this transaction with Mr. Potter, and to take our advice as to whether he ought to accept the nomination to Congress.

This conference was held as called, September 3, 1880. In the presence of the gentlemen named, he, Powers, admitted the truth of the transaction with Mr. Potter, as above stated in substance, but claimed that Mr. Potter had condoned the legal and moral offense by taking his note and converting the money so obtained into a loan, and this being true, others had no cause of complaint against him, and he, said Powers, further informed us, in this conference, that he had used the money so obtained, partly to settle a "woman scrape" in which he was involved, partly to pay a heavy printing bill, and partly to pay the expenses of a trip to New York, and that about \$700 or \$750 (deponent does not now remember which sum he stated) he had loaned to A. J. Shakespeare, then and now the owner of the *Gazette* aforesaid, taking a chattel mortgage to himself on the stock and machinery of the paper; but that when Mr. Potter returned home, after the adjournment of Congress, in the summer of 1876, and began to inquire into the fraud practised on him, the said Shakespeare, knowing how the money had been obtained, and fearing a legal investigation, and a garnishment of the money in his hands, borrowed, with said Powers as security, money enough to pay Powers, and take up the chattel mortgage given him.

This deponent further states that in accordance with Powers' request, we advised him that the nature of his conduct with Mr. Potter was in no wise changed by Mr. Potter's failure to prosecute, or by his taking or receiving a note taken by Wm. A. Wood, without authority, and under no circumstances would we support him for Congress or for any other office of honor or profit. To still further emphasize this advice, the gentlemen above

named as present to hear Powers' statement, jointly addressed to the said Powers a formal communication, (an exact copy of which is hereto attached and made a part of the disposition as Exhibit "A,") advising him to decline the nomination for Congress, recapitulating in said communication so much of his confession as furnished sufficient basis for the advise given. This joint communication was sent to him at Pultneyville, N. Y., (he being there at the time) as a registered letter, the return receipt for which was duly received by us.

And further deponent saith not.

FOSTER PRATT.

Subscribed and sworn to before me, this 3rd day of December, A. D. 1885.

J. W. SWETLAND,

Notary Public, Kalamazoo Co., Mich.

[EXHIBIT "A."]

KALAMAZOO, Sept. 15, 1880.

ORLANDO W. POWERS, Esq.

Dear Sir:

At the interview had between yourself and the undersigned at your solicitation, on the evening of the 3rd inst., you requested us to deliberate upon and frankly advise you concerning your acceptance of the nomination tendered you by the Paw Paw Convention, and you also then volunteered an explanation, orally and by writing, of certain grave charges made against you by one of our leading citizens, reflecting upon your integrity, and which, if true, would alone render your nomination one unfit to be made. The undersigned have carefully and deliberately considered the whole situation connected with your candidacy, and feel impelled by the facts and

circumstances established to advise you to peremptorily decline that nomination. The facts and circumstances upon which this conclusion rests need not be recapitulated, but we observe that from your own showing, the manner of obtaining the \$1,500, and the use made by you of it, while not criminal, nevertheless leaves the matter of your integrity an open question; and although you say you have made a bargain with the manager of the Republican newspaper here that none of these personal charges against you shall be published in that journal, yet you say this is upon condition that Democrats shall keep silent concerning certain personal charges against the Republican nominee.

Now, we must observe as our conviction that other Republican organs in the district will very likely scatter those standals against you, and most assuredly, while the democracy ought not to be trammelled by any such bargain, it cannot afford in the present campaign to defend against personal charges involving the integrity of its candidates.

Again, we should not remain silent respecting the methods adopted to secure to you the vote of that convention. It is true you say you were personally ignorant of them, but whether ignorant or not the methods used and the result could not be easily explained upon that hypothesis, and certainly not excused. But the duty of advising you, which you have asked of us, is rendered less unpleasant by your frank assurance that you did not wish the nomination, and we fully concur in your judgment that you should heed the prayer of your wife, who as you say, believes you ought not, under the circumstances, to accept the nomination. And we join with you in regret that you were not personally present at the convention, so as to have made your declination as effective as you say your letter read to that body was intended, but which, contrary to your wishes, was unheeded.

In conclusion, we hope you will still adhere to your own purpose as declared to us, and relieve the Democratic party of this district of all trouble in this behalf by

preemptorily declining that nomination to the committee having the matter in charge.

Very respectfully,

Your obedient servants,

C. T. METCALF,
JOHN DUDGEON,
FOSTER PRATT,
GERMAIN H. MASON,
E. W. DEYEO.

STATE OF MICHIGAN, }
Kalamazoo County. } ss.

Abraham T. Metcalf, of said county and state, being duly sworn, deposes and says that he is a dentist by profession and has been a resident and citizen of the village and city of Kalamazoo, in said county and state, for over thirty (30) years.

Deponent further says that he was acquainted with Allen Potter for about thirty years prior to his death in said village and city of Kalamazoo, and that said Potter died during the forepart of May last past.

Deponent further says that he became acquainted with Orlando W. Powers shortly after he, Powers, came to Kalamazoo to reside, which as this deponent now recollects was about the year 1872. That when he first knew said Powers he professed to be a republican in politics. That within a short time thereafter, said Powers appeared as a temperance advocate in politics for what was known at the time as the female crusaders, which had a run of several months or a year in this community, but that Mr. Powers did not practice what he preached. That thereafter, and upon the collapse of the crusade movement, Mr. Powers appeared as a Liberal Republican, and advocated the election of Mr. Greeley, and thereafter came out as a Democrat.

Deponent further says that he knew the said Powers and his methods exceedingly well from said period of

his becoming acquainted with him until his exit from Kalamazoo under the appointment of President Cleveland as an Associate Justice or Judge of the Territory of Utah.

Deponent further says that a few days prior to the holding of the Democratic Congressional Convention at the village of Paw Paw, in the County of Van Buren, in said State, which was about the 27th day of August, A. D. 1880, this deponent was called in the Michigan National Bank at Kalamazoo by said Allen Potter, and said Potter advised this deponent in substance that he had learned that Orlando W. Powers had so packed the delegations in the respective counties in this district that he would secure the nomination for Congress, and that Powers would be a pretty man to nominate for Congress. That he, Powers, had dishonorably, dishonestly taken from him, Potter, fifteen hundred dollars. That he, Potter, had much greater respect for a thief who would deliberately steal that amount of money than he could have for Powers, who had gotten it from him by misrepresentation and fraud, and that it could not be that any honest set of men could nominate such a man for Congress, knowing his record.

Deponent further says that he has carefully read the affidavit of Foster Pratt in relation to a conference had at his, Powers', solicitation on the 3d day of September, 1880, at the office of Germain H. Mason, in the village, now city, of Kalamazoo. Deponent further says that his recollection of what took place at said conference corresponds with the statement of the same, as narrated by the said Foster Pratt in his said affidavit, and that he fully endorses the same as being correct and true.

A. T. METCALF.

Subscribed and sworn to before me this 4th day of December, A. D. 1885.

CHAS. E. MONROE,

Notary Public,

Kalamazoo, Mich.

STATE OF MICHIGAN, }
 Kalamazoo County. } ss.

N. H. Stewart, of the City of Kalamazoo, in said county and state, being duly sworn, deposes and says that he is an attorney and counselor-at-law in said City of Kalamazoo, and has been such attorney and solicitor since 1872, when he was admitted to the bar in said city; that since said year, 1872, this deponent has had a large practice in both State and United States Courts, and several years ago was admitted to the Supreme Court of the United States.

And this deponent further says, that he knows Orlando W. Powers very well; that he became acquainted with him shortly after he (Powers) came to Kalamazoo to live and entered into the practice of the law, between 1872 and 1875, and that from said period of time, last aforesaid, to the said time said Powers left the said city of Kalamazoo, to accept a United States judgeship in the Territory of Utah, under the appointment of President Cleveland, he knew said Powers exceedingly well.

And this deponent further says, that during the first summer he lived in said City of Kalamazoo, which was 1868, he became acquainted with Allen Potter, now deceased, and from 1874 until the death of said Allen Potter, which occurred on or about the 5th day of May, A. D. 1885, this deponent was very well acquainted with him, and was consulted as an attorney at various times by the said Potter.

And this deponent further says, that said Allen Potter was elected from this district to the United States Congress, in the fall of 1874, and served one time therein.

And this deponent further says, that in the fall of 1879, while traveling with said Allen Potter, said Potter told this deponent, among other things, in substance, the following, to wit: That just prior to his going to Congress in the fall of 1875, or winter of 1875 and 1876, he was induced by Orlando W. Powers, to consider a

proposition to take stock in a newspaper company that was to be gotten up for the purpose of making a strong democratic paper in the then Village of Kalamazoo; that Powers' scheme was to get up a stock company with \$12,000 capital stock, and that the editor and owner of the *Gazette*, a democratic paper, Mr. Shakespeare, would put in his entire office and paper for \$6,000 of the stock, and that the remaining \$6,000 of the stock should be raised by various democrats taking each a portion, and that he, Powers, was to have a position as a managing or political editor upon the paper when the company should get into operation, and urged upon him, Potter, to take a portion of the stock; that Mr. Potter finally told Mr. Powers, just before leaving for Washington, that in case he, Powers, could get \$4,500 of the cash, \$6,000 taken by other parties, perfect the organization, have the officers appointed, and he get assigned to himself the editorial position as agreed, he would take the remaining \$1,500 of the stock, but that he did not want it in his name, but that it was to be my, Potter's, stock; that he told Powers when all these things were done and completed, to send to him at Washington, and he would at once forward to him, Powers, the \$1,500, and that he also told Powers that the money must be used just as they had agreed, and if not so used it should be returned to him at once; that within a short time after he, Potter, had returned to Washington, he received a letter from Mr. Powers, in which he wrote that the stock company had been completed and organized; that the officers had been all appointed, and that he, Powers, was to have the place desired; that the \$4,500 of cash stock had all been taken, and all that now remained to close up and complete the company was his, Potter's, \$1,500, and that it must be here, Kalamazoo, by the following Tuesday, or the scheme would fall through; that he, at that time, had just about that amount of money by him in the bank at home, and that it cleared him out of ready cash for the time; but determined to make his word good, and that the company should not go down because he failed to keep his word, he at once sat down and wrote Mr. Powers and Mr. Wood, the president of the bank, and arranged it so that Mr. Powers

got the money, he believing, absolutely and implicitly, that all Mr. Powers had written him was true, and never for a moment doubted or suspected Mr. Powers until he returned from Washington, and then, upon his inquiring and investigating to find out how the company was progressing, he learned for the first time that there was not one word of truth in what Mr. Powers had written him; that he had been grossly deceived, and that every word was a lie; that no stock had been regularly subscribed, and none taken, no officers appointed or anything done in the matter, but that he had been swindled out of \$1,500 by Mr. Powers; that not suspecting any crooked work from Mr. Powers, he took no pains to file the letter away and save it, and shortly prior to his return home he burned a great quantity of correspondence, and after great search for the said letter, written by Mr. Powers, which took from him the \$1,500, he had been unable to find it, and had concluded that he had burned it with the other correspondence; that his intentions were, could he find the letter, to make a complaint against Mr. Powers for obtaining money under false pretenses from him. But being unable to find the letter, and there being so many quirks in the law, and Mr. Powers being an attorney, he had concluded to pocket the loss, unless he could some day collect the note Mr. Powers induced Mr. Wood to take at the time he got the money, and which note he, Potter, found he had to take or nothing; but that he should not let it outlaw; that he had never been so completely taken in by any one as by Mr. Powers.

And that deponent further says that frequently after the time before mentioned said Allen Potter talked to this deponent about the said \$1,500 transaction with Mr. Powers, and has asked this deponent several times if, when Mr. Powers got to be worth anything, if he ever did, this deponent would not try and collect the amount of him.

And this deponent further says that within a day or two after the news reached Kalamazoo that Mr. Powers had been appointed an associate judge to the Territory of Utah by President Cleveland, this deponent was

called into the Michigan National Bank of the said City of Kalamazoo by said Allen Potter; that said Potter went to the vault of said bank, and taking therefrom his private box, opened it and took out a note which he produced to this deponent as the note taken by Mr. Wood and finally accepted by him from said Powers; that this deponent took the note and read it, and, as he now recollects the same, it was wrote for \$1,500, bearing date in March, 1876, payable four years after date, with interest, and signed O. W. Powers; that on the back of the note was the endorsement of the interest for the first year, being made in 1877, and that there was an endorsement of a part only of the next year's interest in 1878; that there were no other endorsements than those named last aforesaid, and Mr. Potter then and there told this deponent that though more than nine years had passed since the note was given, not a cent, other than what had been endorsed, had been paid; but inasmuch as the note would outlaw in March, 1886, and Mr. Powers had received the appointment as a judge in Utah as soon as he, Powers, should return home from Lansing, where he understood he had gone to court, he should try and compel him to pay, or secure the same, before he left for Utah, and in case he could not get something done he would turn the same over to this deponent to sue.

And further deponent says not.

N. H. STEWART.

Subscribed and sworn to before me, this 13th day of November, A. D. 1885.

CHAS. E. MONROE,

Notary Public,

In and for Kalamazoo County, Michigan.

STATE OF MICHIGAN, }
Kalamazoo County. } ss.

Stephen S. Cobb, of said county and state, being duly sworn deposes and says that he has been a resident and citizen of the village and city of Kalamazoo, and

State of Michigan, for more than thirty years last past, and that he was well acquainted with Allen Potter in his lifetime, and that this deponent was one of the appraisers of the property of the estate of said Allen Potter, deceased; that as such appraiser he appraised four notes given at the date hereinafter stated, payable at the respective dates and in the respective amounts hereinafter named, to wit: one note, dated April 28, 1885, for \$560, payable one year from its date; one note, dated April 28, 1885, for \$560, payable two years from its date; one note dated April 28, 1885, for \$560, payable three years from its date; one note dated April 28, 1885, for \$560, payable four years from its date.

Deponent further says that for several years last past, he has known in a general way, by common talk, of the manner in which Orlando W. Powers, of said City of Kalamazoo, and State of Michigan, procured fifteen hundred dollars of said Allen Potter, in the spring of 1876, and that the same was so procured by misrepresentation and fraud, as near as he, this deponent, could learn the same.

And this deponent further says that the said four notes so appraised as aforesaid by him, were given, as he has been informed and believes, to take up and in settlement of the original \$1,500 note, given by the said Powers to said Potter in the said spring of 1876.

And further deponent says not.

STEPHEN S. COBB.

Subscribed and sworn to before me, this 14th day of November, A. D. 1885.

CHAS. E. MONROE,

Notary Public,

In and for Kalamazoo County, Michigan.

SALT LAKE CITY,
Saturday Morning, October 3d, 1885.

An editorial taken from *The Daily Tribune*:

A GENTILE PAPER.

An Ogden Democrat writes *The Daily Tribune*, asking what we think of Judge Powers sending a present to an editor who is now under indictment in the Judge's own court, and who has shamefully traduced and lied about three or four officers of the same court. We think the act reveals a want of dignity, self-respect and honest pride on the part of the judge, Powers, which is as suprising as it is unexplainable.

—
Taken from *The Kalamazoo Daily Telegraph*,
October 5, 1885:

SALT LAKE CITY, October 3, 1885.

Soon after Judge Powers became Associate Justice of Utah, he was assigned to the first district. Last spring, editor Heminway, of the Mormon *Ogden Herald*, published libelous articles about the members of the grand jury, the court and other federal officers.

Powers instructed the grand jury on libel, and they indicted Heminway for criminal libel; the case is to be tried in November. Heminway was married last Tuesday. Among the presents reported by the Mormon papers, was a handsome silver tea set from Judge Powers, with compliments.

This causes much comment and criticism among anti-Mormon citizens.—*Chicago Tribune*.

STATE OF MICHIGAN, }
Kalamazoo County. } ss.

Henry J. Brownell, of the City and County of Kalamazoo, being duly sworn, deposes and says that he has been a resident of the said County of Kalamazoo for a period of forty-four years, except a period of about three

years, commencing in August, 1862, when this deponent was in the army of the United States, in the war of the rebellion, and a period of about two years and a half in the Territory of Dakota, managing the farm and hardware business of this deponent, at Dalond, Spink County, in said Territory, and that this deponent returned from there to this city about three months last past.

Deponent further says that for many years, while living in the Village of Kalamazoo, he was an officer of the law as Deputy United States Marshal, Under Sheriff, Deputy Sheriff, and at times, Constable of the Township of Kalamazoo, and was one of such officers in the years 1878, 1879 and 1880, last past.

Deponent further says that he has been acquainted with Emily Mason, of the said City of Kalamazoo, since 1865, and that the father of said Emily Mason died in the arms of this deponent in the latter part of the summer of said year, 1865, shortly after this deponent returned from the army.

Deponent further says that he has been acquainted with Orlando W. Powers since he first came to Kalamazoo, which was about the year 1872 or 1873.

Deponent further says that said Emily Mason used to consult this deponent frequently in relation to her business matters, and that in the latter part of December, 1878, and early January, 1879, said Emily Mason came to this deponent and advised him that she had placed the collection of a legacy due her from her grandfather's estate in Orleans County, New York, in the hands of O. W. Powers nearly a year prior to that time; that the money was ready to be paid over before she had arranged with Mr. Powers to get it for her, and that she had given him a power of attorney to collect and receipt for the same; that Powers had been east long since, but had on his return denied of having collected the money or any part of it, and his conduct was so strange and he seemed to avoid her so that she believed he had collected it, and was trying to avoid payment over to her, and wished this deponent to assist her in its collection from Powers, if he had collected the money.

Deponent further says that he advised the said Emily Mason to first write to the parties in Orleans County and find out from that quarter what, if anything, Powers had done there in the way of collecting the money, and if she found they had paid it over to him, Powers, he would assist her in trying to collect it from him.

Deponent further says, that thereafter Emily Mason called upon him, and showing him the correspondence that she had received from said place, which showed that early in the month of September, 1878, payment of said money to the said O. W. Powers had been made.

Deponent further says, that after he had seen said letters and proofs of the payment of the said money to the said Powers, as aforesaid, and which, as this deponent now recollects the same was about \$483, he called upon the said O. W. Powers alone and asked him if he had collected the money for Emily Mason yet, of her grandfather's estate in Orleans County, N. Y., to which said Powers replied and said: "No, I have not collected a cent;" that the money on hand was ready to be paid over, but that there was some technicality about a small mortgage that had first to be arranged before the money on it could be paid, but that he would not take any part of the money until he could collect it all; but that it was all right and would come in a short time. This deponent then said: "You had a power of attorney, did you not, and that being so, why did you not take the money on hand and bring that home to Miss Mason?" To which Powers replied and said: "Because I didn't wish to take any until I could take the whole."

Deponent further says that said Powers at the said interview last aforesaid looked and acted guilty, although he denied having then collected the money.

Deponent further says that thereafter and within a few days after the last aforesaid interview with said Powers, he again called upon him in company with the said Emily Mason, and she then had the correspondence she had before shown to this deponent, and which is attached to her affidavit of October 18th last, 1885; that Mr. Pow-

ers was in his office when said Emily Mason and this deponent entered, and appeared at once to be greatly agitated by their call; that at once Miss Mason proceeded to confront Mr. Powers with the correspondence she had received as to his having collected her money long before that, and that he had stoutly denied of having collected, and thereupon the said Powers was obliged to and did confess that he had lied to Miss Mason, that he had collected her money, but that he had spent it and could not pay it, but that he would try and raise it; and then and there begged the said Emily Mason and this deponent not to expose him and prosecute him, as it would ruin him and his reputation.

Deponent further says that after Powers had admitted that he had collected the money and made the statements above alluded to, this deponent left his, Powers', office and Miss Mason in it.

Deponent further says that thereafter he had placed in his hands, as a constable, an execution issued upon a judgment against the said O. W. Powers and in favor of the said Emily Mason; that this deponent made diligent search for something to levy upon to satisfy said execution but that he could find nothing whatever; that upon the law library and books said Powers claimed to own, he found them covered with two or three chattel mortgages, and that he was not the owner of any other property whatever that this deponent could find.

Deponent further says that from the course of conduct pursued by the said Powers in this community, and by the bad reputation he bore, he felt as though there was no reliance to be placed upon him, and that he had to know himself before he could rely upon anything he said in dealing with him.

HENRY J. BROWNELL.

Subscribed and sworn to before me, this 9th day of December, A. D. 1885.

CHAS. E. MONROE.

*Notary Public,
In and for Kalamazoo County, Michigan.*

STATE OF MICHIGAN,)
) ss.
 Kalamazoo County,

N. H. Stewart, of said county and state, being duly sworn, deposes and says that he is an attorney-at-law, and has been such attorney since 1872 last past, in both state and federal courts.

Deponent further says that he is now and has been for over ten years last past acquainted with Don M. Dickinson, of the City of Detroit, in said State of Michigan, and has frequently met said Dickinson in various Michigan State Democratic Conventions.

Deponent further says that one evening during the latter part of April last past, this deponent casually met the said Dickinson at the Ebbitt House in the City of Washington; that at said time and place substantially the following conversation took place between said Dickinson and this deponent in relation to O. W. Powers, and his then recent appointment as an Associate Justice to the Territory of Utah:

DICKINSON. Well, Stewart, I thought I had done you a great favor, and I hear you are kicking about it.

DEPONENT. In what have you done me a great favor?

DICKINSON. In getting rid of O. W. Powers and sending him out to Utah among the Mormons.

DEPONENT. How is it that you consider Powers' appointment a favor to me; I have no interest in it any more than any citizen of the country?

DICKINSON. Well, I knew he was not a fit man and was a disturbing element in the party, not only at Kalamazoo, but in the state generally, and that he was not to be relied upon; that it is a nasty little judgeship out there in Utah; that you would not, and I didn't know of any one else that would take, and I thought it a good opportunity to get rid of him and relieve not only you but the state from him, and so I got him appointed, and now I find you are kicking against it and want him back among you. He is now away and we are all rid

of him. The appointment has been made and it will do no good to make any disturbance about it now, and there are two or three of the old fossilized fellows that I propose to get rid of also.

DEPONENT. You knew, then, that it was an appointment unfit to be made, and so it is, and it will stand credited up to Michigan, and be the means of keeping a good man out of some other place Michigan should have. You, it would seem, have undertaken to carry Michigan in your pocket, but you will find it will be too large for you so to carry. I have no personal grievance in the matter at all, but I know Powers to be in every way an unfit man for any such position, and in your doling out the federal patronage of Michigan, please give me no more consideration than you do any other citizen.

Dickinson further said that Mr. Powers had been endorsed by all the Supreme Court Judges of the State of Michigan; and to which this deponent replied and said: "If that be true, it was only done upon the urgent solicitation of yourself or Powers;" upon which said Dickinson said: "I telegraphed Powers to get an endorsement of the Supreme Court and the Legislature."

Deponent further says that thereafter, and while in the City of Lansing, in attendance upon the Supreme Court of said State of Michigan, this deponent was informed by at least one of the Judges of said Supreme Court that he had received a very urgent telegram from Kalamazoo, to send an endorsement of O. W. Powers, as a proper and fit person to appoint as Associate Justice of Utah, but I could not, in conscience, do it, and thereupon tore up the telegram and threw it in my waste basket.

Whereupon, this deponent being surprised after his interview with said Dickinson, asked said judge if he really meant what he said, and if it were not true that he had endorsed Mr. Powers for said judgeship, and that he was charged with having endorsed Powers; to which, said Judge replied and said: "I did not, and if they have gotten any endorsement for him with my name attached it is a forgery, and I wish you (deponent) to find it out

for me for it is not true;" and then and there this deponent informed said judge that Don Dickinson had so advised him in Washington, and again said judge repeated and said: "If they have any such thing it is a forgery, and I want you to find out if they have any endorsement whatever purporting to come from me."

Deponent does not wish at this time to give the name of said judge, but will if it becomes necessary and material. A portion or all of the above foregoing conversation between said Dickinson and this deponent was heard by Harry H. Smith, journal clerk of the House of Representatives; this deponent believes and is very sure that said Smith heard the entire conversation in relation to the reason assigned by said Dickinson for procuring the appointment of said Powers, and that he, Dickinson, knew he was unfit, and that he was a disturbing element, and got rid of him for that reason.

Deponent further says there was much other talk between himself and said Dickinson about Michigan appointments at said time, which, if deemed proper and relevant by the Judiciary Committee, this deponent will fully narrate.

N. W. STEWART.

Subscribed and sworn to before me, this 9th day of December, A. D. 1885.

CHAS. E. MONROE.

Notary Public,

In and for Kalamazoo, County Michigan.

STATE OF MICHIGAN, }
KALAMAZOO COUNTY, } ss.

Durfee E. Wilcox, of said county and state, being duly sworn, deposes and says, that he is fifty-eight years of age and has lived in the Township of Cooper in said county and state for seventeen years and upwards, and that during said period of time he has owned and still owns and carries on a farm in said Township of Cooper.

Deponent further says that he came to Michigan from Wayne County, New York, where he also owned and carried on a farm.

Deponent further says that he has been acquainted with Orlando W. Powers, recently appointed as an Associate Justice of the United States Supreme Court in the Territory of Utah, from his boyhood up, both in the State of New York, and later in Kalamazoo, Michigan.

Deponent further says that he had occasion at one time to employ an attorney, about the year 1878, and said Powers then being a practicing lawyer in the then Village of Kalamazoo, this deponent employed him.

Deponent further says that said Powers got him fully entangled, and because of the incompetency of the said Powers this deponent's case was turned out of court, and only upon the advise and direction of another attorney, was he able to go forward, by beginning anew, and succeed.

Deponent further says, that said Powers, during the time this deponent had him employed, would collect money belonging to this deponent and not advise him of it, and when thereafter this deponent would find it out (but never through Powers) he would call upon said Powers for the same and find it always had been spent, and this deponent avers that he has never been able to get the same, or any part thereof, and that this deponent says that he was obliged to go elsewhere for counsel because of said Powers' conduct.

Deponent further says that he paid said Powers in full and got rid of him as soon as possible, after learning that his reputation was bad and scaly, and that he could not be trusted or his word relied upon.

Deponent further says, that he had occasion to thoroughly test said Powers as to veracity, honesty, integrity and reliability, but found out to his sorrow, cost and expense, that the said Powers was totally wanting in all, and that by making inquiry, this deponent found that he was not alone in his sad experience in dealing with said Powers, and that he came to the conclusion, if all attorneys were of the same character and

methods, about all this deponent wanted to do would be to speak to them and get away as soon as possible.

This deponent further says, that while he had said Powers employed as his attorney, as aforesaid, and about the year 1880, he collected a judgment, belonging to this deponent, of about \$115, by taking the same, unbeknown to this deponent, of the Sheriff of Kalamazoo County, who had collected it on execution, and appropriated the same to his (Powers') use, and that when this deponent became aware of the fact that said Powers had received his said money, this deponent called upon him for the same, and was informed that it, too, had been spent, and this deponent, to this day, has never been able to collect one cent of said money.

Deponent further says, that in the aggregate, said Powers has taken in one way and another that he had no right to, or been the means of his losing, at least five hundred dollars.

DURFEE E. WILCOX.

Subscribed and sworn to before me, this 12th day of December, A. D. 1885.

CHAS. E. MONROE,

Notary Public,

In and for Kalamazoo County, Michigan.

STATE OF MICHIGAN, }
KALAMAZOO COUNTY, } ss.

John Rea, of said County and State, being duly sworn, deposes and says, that he has been a resident and citizen of the village and City of Kalamazoo, in said County and State, and a property owner and merchant therein for a period of over thirty years.

Deponent further says that he has been acquainted with Orlando W. Powers for a period of ten years and upwards in said village and City of Kalamazoo.

Deponent further says that during the year 1881 he became involved in litigation with his wife where it became necessary for this deponent to employ counsel to protect his property, rights and interest against the unjust claims and demands, as this deponent believed, of his said wife.

Deponent further says that at the outset he called upon said O. W. Powers and laid his entire case before him, and Powers advising this deponent he was right and that he could certainly come out victorious in the litigation, this deponent then and there made a contract with said O. W. Powers to take his case and carry his side of it through for one hundred dollars.

Deponent further said that the conduct of the said Powers in the management and conduct of the deponent's side of the case, can be reconciled only with corruption and dishonesty on the part of said Powers, that he led this deponent on and on until all the property this deponent had became involved, and this deponent was in great danger of losing the whole thereof; that days and weeks, and even months, of time were spent by the said Powers in putting in and allowing the other side to put in useless and irrelevant testimony; that at the hearing in the Circuit Court before his Honor, Judge A. J. Mills, said judge severely criticised and reprimanded said course, so pursued as aforesaid by the said Powers in the said cause, and that said court, by dismissing the case, left said litigation substantially where it started, except this deponent, through the action and treachery of his said counsel, had been so nearly financially ruined; that on the appeal of the other side to the Supreme Court of this state, this deponent could not raise money enough to employ an attorney to prepare and arrange his side of the case in that court, and deponent was obliged to and did argue the case on his own behalf in said court—a fact which is known to the Hon. T. E. Tarsney, a member of the present House of Representatives from Saginaw, who was present at the time.

That notwithstanding the thousands of dollars said Powers had cost this deponent in said litigation, need-

lessly, said Powers repudiated his contract with this deponent aforesaid and brought suit in attachment against this deponent for the sum of twelve hundred dollars, and this deponent rather than have any further dealings or business relations with the said Powers, whom he learned to thoroughly believe was dishonest and disreputable, as well as unscrupulous, settled with him by giving the said Powers five hundred dollars.

His honor, Judge Cooley, who was at the time Chief Justice of the Supreme Court of this State, in delivering the opinion of that court in deponent's case, used the following language, to wit: The record is an extraordinary one; the careful and conscientious circuit judge says, in an opinion filed by him, "I cannot pass over in silence, and do my duty, the unlawyer-like wrangling which took place between counsel during the taking of testimony in this case; this record is full of unprofessional statements taken down by the commissioner at the request of counsel, and of objections, which are not only burdensome and expensive to the litigants, but are scandalous in the extreme. The commissioner should have declined to have recorded the same. It must further be added that the proofs, as taken, are very unnecessarily prolix and cumulative, and would in any other than a divorce case, in which one of the parties has no property, be met with a decree charging the party or parties responsible therefor with the costs of taking the same."—Judge Cooley.

"This is a very moderate statement. The record is at least five times as voluminous as was needful for bringing out the material facts." &c., &c.—N. W. Reporter, March 22, 1884, page 551.

Deponent further says that nowhere in his experience has he known or heard of a client being so dishonorably and dishonestly dealt with by an attorney as he has been by the said O. W. Powers, and this deponent further says that when the news reached him that the said O. W. Powers had received the appointment of Associate Justice of the United States Court at Utah, this deponent was amazed and astonished, and he

UNITED STATES SENATE.

IN THE MATTER OF THE APPOINTMENT

—OF—

ORLANDO W. POWERS

*As Associate Justice of the Supreme Court
of the Territory of Utah.*

SUPPLEMENTAL PROOFS.

EDWIN F. CONELY,

Attorney for Objectors.

STATE OF MICHIGAN, }
 Kalamazoo County. } ss.

Henry W. Bush, being duly sworn, deposes and says that he has resided in said County and State for a period of over forty-four years, and in the village and city of Kalamazoo for a period of over eighteen years; that for many years prior to his moving to the village of Kalamazoo he was supervisor of the township of Charleston in said county; that he was elected as register of deeds in said County in the year 1866, and was again elected as such register in 1868; that thereafter he was elected supervisor of the township of Kalamazoo, and has been such supervisor for five years—the last expiring in the year 1876.

Deponent further says that he is, at present, superintendent of the poor of said Kalamazoo County, and has been such superintendent for a period of six years last past.

Deponent further says that he has been acquainted with the family of Emily Mason for about forty-four years, and knew her father, whose name was Calvin N. Mason, from that time until his death, which occurred about the year 1865, as this deponent recollects; that he left him surviving his widow and two small children, one of whom was a girl named Emily; and that said widow and her daughters have continued to live together in the village and city of Kalamazoo since the death of the said elder Mason; that said Calvin N. Mason, deceased, left his said family in moderate circumstances, which by careful management and frugality on the part of the widow enabled her to support herself and two children in a comfortable, though by no means luxurious manner; that said family, and especially said mother and daughters, are highly esteemed and respected in every way by all who know them; that being a near neighbor and friend this deponent was frequently consulted by said widow Mason and her daughter Emily about their business matters; and that such advice as this deponent was able to give to them was freely given.

Deponent further says that in December, 1878, said Emily Mason came to this deponent and advised him that she had been left some property by her grandfather, then recently deceased in Orleans County, New York; that she had received a portion of it through J. W. Breese, an attorney of the village of Kalamazoo, and to collect the balance, she had given to Orlando W. Powers a power of attorney, upon his request, and upon an agreement that inasmuch as his people lived within a few miles of her grandfather's estate, and he wanted to go home and see them, he would do her business in the collection of the balance of her legacy for just his expenses home and back to Kalamazoo; that she had given the said Powers the said power of attorney some months prior thereto, and that he had been East several times since; that the money was on deposit, as she understood, ready to be paid over, at the time she gave said power of attorney to said Powers, to any authorized person; that Mr. Powers, she thought, had purposely avoided meeting her, and finally after she had succeeded in facing him, he denied of having collected a penny of her money, but that his conduct was such that she became suspicious that he was not honest or truthful, and believed he had collected her money, but had appropriated it, and she wished to know what to do to find out about it; that this deponent then advised said Emily Mason to first get the proof from New York as to just what Mr. Powers had done, if anything. If it should turn out that he had collected her money, to take a witness with her, demand it in presence of the witness, and if not paid this deponent would take her to an attorney; that thereafter said Emily Mason brought to this deponent the letters and correspondence attached to her affidavit of October 18th last past, and that the same was also examined by Henry J. Brownell, who also sought to assist said Emily Mason in the matter.

Deponent further says that said Powers, as he was advised by said Emily Mason and Henry J. Brownell, stoutly denied that he had collected any money whatever of Emily Mason until confronted with the proofs from Orleans County, New York, and then he did not pay any portion of it over to Miss Mason until after she

had employed another attorney at great cost and expense to collect the same of said Powers.

Deponent further says that thereafter and in September last past, while said Powers was in Kalamazoo, from Utah, this deponent called upon him and requested that he pay the judgment obtained by Emily Mason against him December 13th, 1879, of forty dollars and interest; that said Powers promised this deponent positively that he would meet him on Monday the 14th of September, and pay said judgment in full; that said 14th of September came, but Mr. Powers did not until sought out by this deponent, and after this deponent found the said Powers he was able to get of him, Powers, only twenty dollars, to pay on said judgment, although said Powers had plenty of money by him that this deponent saw; that then and there said deponent advised said Powers that Miss Mason needed the money, and unless the same was paid he would send a transcript thereof to Utah and sue it over again, whereupon said Powers advised this deponent that he would send the balance without fail, and he could rely upon it by the 1st of the then coming October. Deponent says that Mr. Powers did not send the said money by the 1st of said October, nor any part thereof, nor has he sent it nor any part thereof to the present time, neither has he written or explained why he has not done as he agreed and sent said money, and deponent says that said Powers failed in this as in other transactions that this deponent has had with him to keep his word and to do as he agreed and promised.

Subscribed and sworn to before me this }
28th day of December, A. D. 1885. }

HENRY W. BUSH.

CHARLES E. MONROE,

Notary Public,

In and for Kalamazoo County, Mich.

STATE OF MICHIGAN, }
 Kalamazoo County. } ss.

Emily Mason, of said county and state, being duly sworn, deposes and says, that she is the same Emily Mason who made an affidavit on or about the 18th day of October, last past, in relation to the collection and appropriation to his own use of money belonging to this deponent by Orlando W. Powers.

Deponent further says, that between the 16th and 19th of December, last past, this deponent was called upon at her home in the City of Kalamazoo, by the following named persons, to-wit: Andrew J. Shakespeare, the present postmaster of the City of Kalamazoo; William R. Coats, Edward W. DeYoe, the present Mayor of the City of Kalamazoo, and on Wednesday, the 23d of said December, was called upon by Robert F. Hill, an attorney, of said City of Kalamazoo.

Deponent further says that all of said parties last aforesaid named, appeared to be very much interested in behalf of Mr. Orlando W. Powers, and the whole topic of their conversation and purpose of their calls, respectively, was to ask this deponent concerning the affidavit that she had theretofore made in relation to her money collected and appropriated by the said Powers as stated and set forth in her said former affidavit.

Deponent further says that said Andrew J. Shakespeare, after introducing himself, asked this deponent if it were true that Mr. Powers had collected money of her's and failed to pay it over, and if it was eight hundred dollars; that he wanted more light on it. And this deponent says that she advised said Shakespeare that Mr. Powers had not collected eight hundred dollars, but that he had collected over four hundred dollars of her money and then denied he had collected any, and that there was a balance still unpaid; also, that her former affidavit correctly stated the transaction.

Deponent further says, that after the said Shakespeare called upon her, as aforesaid, said Wm. R. Coats and Edwin W. DeYoe called together, and said DeYoe advised this deponent that they had called to learn if the

story that was going round that Mr. Powers had collected money of her's, and had not paid it over was true, and if the same was eight hundred dollars; and to which this deponent replied and said: The amount as stated in the *Daily Telegraph*, of eight hundred dollars, was not true, but that Mr. Powers had collected her money and had used it, and had denied having collected it after she knew he had. That this deponent advised said DeYoe and Coats that she did not wish to say anything more about the matter to them, but that said gentlemen, Coats and DeYoe, were very persistent and determined to get this deponent to talk to them about the said transaction with said Powers, and became rather offensive in their persistence in putting direct questions, and yet insisted at the time that all they wanted was to know the truth about the transaction and get her story. This deponent finally advised said DeYoe and Coats that Mr. Powers had collected her money, denied he had it after he had collected it, and then did not pay any of it until after she had employed another attorney to collect it of him, and that there was a balance of the judgment still unpaid.

Deponent further says that said Robert F. Hill called upon this deponent on said 23d day of December and offered this deponent what he, said Hill, claimed to be \$38.00, upon the condition that this deponent would sign a paper writing that he had in his hands, which said Hill said was a receipt. That thereupon this deponent advised said Hill that she had an agent whom she had to do her business, and that if after submitting the matter to him, he advised her to take the money and sign the paper or receipt she would, but that he might, however, go to the court and pay it on the judgment there, whereupon said Hill said he preferred not to do that. He wished the receipt he there had signed by this deponent; that this deponent then advised said Hill if he would call on her in the morning at ten o'clock she would advise him finally what she would do; to which said Hill replied and said: he would call again in the morning, between nine and ten o'clock.

(This would have been December 24th, A. D. 1885). That this deponent remained home, as she had

advised said Hill she would, the morning of said 24th of December, and has been and remained home since that time, but neither said Hill nor any other person came to see her with said money or any part thereof, to the present time. That the above and foregoing statement is the substance of all the talk this deponent had with said respective parties.

Deponent further says that not only is the former affidavit made by this deponent true in relation to all matters therein stated, but that said Powers was a member of the firm of Powers & Daniels, in the village of Kalamazoo, and that said Powers & Daniels acted as the attorneys for the mother of this deponent in a small claim of twenty dollars placed by her in their hands for collection against one Amos Knerr, that said Powers & Daniels collected said claim and every dollar thereof without suit, but that not one cent of it has yet been payed over to the mother of this deponent or any one else for her; that said claim last aforesaid was also placed in the hands of said Powers & Daniels about the same time this deponent placed her said matters in the hands of said Orlando W. Powers.

EMILY MASON.

Subscribed and sworn to before me this }
26th day of December, A. D. 1885. }

HENRY W. BUSH,

Notary Public in and for Kalamazoo Co., Mich.

GRAND RAPIDS, MICH., Dec. 26, 1885.

Edwin F. Conely, Esq.,

Detroit, Mich.:

My Dear Sir— Your favor of yesterday received. I never endorsed nor otherwise approved the nomination of Judge Powers for the position of Associate Justice of Utah. I have heard before that he had the unan-

ymous recommendation of the Judges of the Supreme Court of Michigan, but it is not true so far as it relates to me. The first intimation that I have had that he was an applicant for that position was a telegram which I received from a citizen of Kalamazoo, at about nine o'clock in the evening of the purport following:

"Telegraph the Attorney General, recommending the appointment of O. W. Powers for Associate Justice of Utah. Do it quick and sign it officially."

I did not do it quick, or at all, for the reason that I never sign anyone's application for appointment officially, and for the further reason that my acquaintance with Mr. Powers' social standing, character and ability was not sufficient for me to recommend him to a responsible position. At that time I had heard nothing derogatory to his character, and my reasons for not recommending him were simply those which I have stated, and now the only interest I have in this matter is to learn by whom and by what authority any one has signed my name to a recommendation for the appointment, if such fact exists.

As to the fitness of Judge Powers for the position I am as ignorant as I was when I was requested to "do it quick and sign officially."

Very truly, etc,

J. W. CHAMPLIN.

ANN ARBOR, Michigan, Dec. 22, 1885.

E. F. CONELY, ESQ.,

My Dear Sir.

I have heretofore explained to you how I came to be entrapped into giving a certificate of the standing of O. W. Powers at the bar of this State. The certificate was given in perfect good faith on my part, and in reliance on the strong and positive statements of one of his neighbors then associated with me in official relations, that it would be proper and right to do so.

That gentleman has since informed me that he greatly regrets what he did in the matter, and facts have come to his knowledge which satisfy him that the appointment of O. W. Powers to an official position is an improper one. I am entirely satisfied of that fact myself, and think his confirmation would be a misfortune, not only for the people immediately concerned, but for the State, whose nominal representative in the judicial force of the Territory he will be.

You are at liberty to show this to the Attorney General.

Very respectfully yours,

T. M. COOLEY.

KALAMAZOO, December 24, 1885.

E. F. CONELY, Esq.,

My Dear Sir:

Last spring I recommended O. W. Powers, by telegram, to the Attorney General, U. S., for the position he now holds. I did so in entire good faith, believing he was a proper person for that office. In this I feel that I erred. What I have learned since induces this belief, and I could not conscientiously do so now.

My desire is that my recommend shall be without influence in any action hereafter to be taken in his case, and that those whose duty it is to act, and who might be influenced by my telegram, may know my views in the matter.

You are at liberty to show this to Attorney General Garland, to whom my telegram was directed.

I am, very truly your friend,

T. R. SHERWOOD.

UNITED STATES OF AMERICA.

In the matter of the appointment
 of Orlando W. Powers to the Associate
 Justiceship of the Territory of Utah. }

STATE OF MICHIGAN, }
 County of Wayne, } ss.
 City of Detroit. }

Edwin F. Conely, being duly sworn, deposes and says as follows:

1. That he has resided in said city above fifteen years, represented the same in the State Legislature during 1877 and 1878, and is now a member of the Board of Water Commissioners of said city; that though a native of the State of New York, he has resided in Michigan over thirty years and as a delegate represented it in the National Democratic Convention of 1880, at Cincinnati, Ohio; that he is an attorney and counsellor-at-law of the Supreme and other Courts of said State, of the United States Circuit and District Courts for the Eastern District of Michigan, and of the Supreme Court of the United States.

2. That in the matter of the appointment of Orlando W. Powers as Associate Justice of the Supreme Court of the Territory of Utah, affiant has no personal interest whatever other than that which every patriotic citizen of the United States should have; that he has, however, a professional connection therewith as the representative of others, who, believing, as he believes and has good reason to believe, that said Powers, as a lawyer and as a man, is unworthy of said office and unfit to hold the same, have employed affiant to lay before the Senate, or its proper committee, proofs bearing in any manner upon

the propriety of making or confirming said Powers' appointment.

3. That, while affiant is well acquainted with the history of said Powers in Michigan, and with his general reputation therein, so far as the same may be material to this matter, he has never had any personal or other relations nor any political or other controversy with him.

4. That affiant has not been and is not now retained or employed in this matter, and no money or means have been contributed to affiant's retainer or employment therein, directly or indirectly, by the Mormon Church of Utah or of anywhere, nor by any association, society or aggregation of Mormons, nor by any Mormon interest, nor by any Mormon or any number of Mormons; that no advice, aid, counsel or assistance in this matter has been afforded, received or obtained from any Mormon source whatever; and that affiant and all persons by him represented have no sympathy with or friendship for the Mormons, their church, their institutions or their practices.

5. That during the present month of December, 1885, a false report that affiant was in the employ of Mormons, and that the objections to Powers' appointment and confirmation was instigated by the Mormon Church or by Mormons, were started and circulated in the City of Detroit and transmitted thence to Washington; that the report first came to Washington by telegram, from the *Detroit Evening Journal*, to its correspondent at Washington, and by him communicated to several persons at the latter place; that affiant learning by this means, at Washington, of said report at Detroit, telegraphed the *Evening Journal* an emphatic denial thereof, whereupon said paper published the report as coming from Washington, but at the same time published affiant's denial thereof; that said report as published in the *Journal* was sent from Detroit by some one to the *New York World*, and therein published without affiant's denial, as though the latter had never been made; that affiant telegraphed denial of report to the *New York World*, which for a time at least published nothing further about

it, but did not publish the denial; that subsequently a further denial of such report was published in the *Detroit Evening News*; that subsequently a similar false report was published in the *Detroit Free Press*, purporting to come from Utah; that affiant denied to President Cleveland, through Hon. T. E. Tarsney, the truth of such report, and offered to make an affidavit of like import with this, but the President said affiant's denial was sufficient; that such report is absolutely and unqualifiedly false, and known or believed to be so by the circulators thereof, and was wilfully and maliciously manufactured by some person or persons unknown to though suspected by affiant, for the purpose of fraudulently aiding said Powers by making him appear in the light of a martyr, or of one persecuted by persons obnoxious to the United States authorities, and was first heard of in the City of Detroit. Further says not.

EDWIN F. CONELY.

Subscribed and sworn to before me }
this 26th day of December, 1885. }

GEORGE H. LOTHROP,

Notary Public, Wayne Co., Mich.

STATE OF MICHIGAN, }
Kalamazoo County. } ss.

Theron F. Giddings, of said County and State, being duly sworn, deposes and says that he is the clerk of said Kalamazoo County, and has been for a period of over three years last past.

Deponent further says that he is acquainted with the handwriting of Orlando W. Powers, and that he has recently examined the execution of which a certified copy together with endorsements on the back is hereto attached; and that the words "Powers and Daniels"

attached to the receipt of \$99.70 endorsed on the back of said execution is in the handwriting of said Orlando W. Powers, as he verily believes.

THERON F. GIDDINGS.

Subscribed and sworn to before me this }
28th day of December, A. D. 1885. }

N. H. STEWART,

Notary Public,

In and for Kalamazoo County, Mich.

STATE OF MICHIGAN, }
County of Kalamazoo. } ss.

The Circuit Court for the County of Kalamazoo.

To the Sheriff of the County of Kalamazoo, Greeting:

IN THE NAME OF THE PEOPLE OF THE STATE OF
MICHIGAN.

[SEAL.] You are commanded that of the Goods and Chattels of Richard Armstrong, defendant, and for want thereof, then of his lands and tenements in your Bailiwick, you cause to be made the sum of Twenty-five dollars, which Durfee E. Wilcox, plaintiff, lately in the Circuit Court for the County of Kalamazoo, aforesaid, at the Court House in Kalamazoo, recovered against him for his damages which he has sustained on occasion of certain trespasses committed by said defendant against said plaintiff; also seventy-three dollars and seventy cents, which were awarded to the said plaintiff for costs and charges, by him about his suit in that behalf

expended, whereof the said defendant stands convicted as appears of record; and you have that money before the Circuit Judge for the County aforesaid, at the Court House in Kalamazoo, on the 6th day of August, 1878, next ensuing, then and there to render to the said plaintiff for his damages and costs aforesaid, and have you then and there this writ.

Witness, The Honorable Josiah L. Hawes, Circuit Judge, at Kalamazoo, on the 5th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

HENRY S. SLEEPER, Clerk.

POWERS & DANIELS.

\$102.30.

Received, July 11th, 1878, of Richard Armstrong, one hundred and two dollars and thirty cents, in full of damages, costs and interest on the within execution.

LYMAN M. GATES, Sheriff.

By SHELDON ALLEN, Deputy Sheriff.

\$99.70.

Received July 11, 1878, of Sheldon Allen, ninety-nine and 70-100 dollars, in full of damages, costs and interest on the within execution, except sheriff's fees.

POWERS & DANIELS.

STATE OF MICHIGAN, }
County of Kalamazoo. } ss.

I, Theron F. Giddings, Clerk of the County of Kalamazoo, and the Circuit Court thereof, the same being a Court of Record and

having a seal, do hereby certify, that I have
 [SEAL.] compared the annexed copy of execution in
 case of Wilcox v. Armstrong with the original
 record of said execution, now remaining in
 my office, and have found the said copy a
 correct transcript therefrom and of the whole of such
 original record.

In testimony whereof, I have hereunto set my hand
 and affixed the seal of said Circuit Court at Kalamazoo,
 this 28th day of December, 1885.

THERON F. GIDDINGS, Clerk.

STATE OF MICHIGAN, }
 Kalamazoo County. } ss.

Durfee E. Wilcox, being duly sworn, deposes and
 says that after making an affidavit on the 12th of De-
 cember, last past, in relation to his employment of and
 dealings with Orlando W. Powers, he has searched the
 records of the case of this deponent against one
 Armstrong, in the Circuit Court of this county, which
 was the case in which a certain amount of money was
 collected on execution, belonging to this deponent,
 but received and appropriated by the said O. W.
 Powers, for the purpose of getting the precise amount
 of money, and the date the same was received by said
 Powers; and that upon such search as aforesaid this
 deponent found that the execution in said cause was
 issued on the 5th day of June, A. D. 1878, command-
 ing the sheriff of said county to collect of the said
 Armstrong in damages and costs \$99.70; that said
 execution shows the collection by Sheldon Allen, a
 deputy sheriff, \$102.30 on the 11th day of July, 1878;
 and, also, the said execution had a receipt of \$99.70
 endorsed thereon, signed Powers & Daniels, under date
 of July 11th, 1878; and that the following is a true copy:

STATE OF MICHIGAN, }
 Kalamazoo County. } ss.

C. G. Townsend, one of the editors of the *Daily Telegraph*, of the City of Kalamazoo, in said county and State, being duly sworn, deposes and says that he has been acquainted with Emily Mason of said City of Kalamazoo for a period of four years and upwards.

Deponent further says that he is well acquainted with the said Emily Mason's character and standing in said City of Kalamazoo; and that the same is first-class in all respects, and spotless; that her word or oath can be taken and relied upon in full and complete confidence for what she might say.

C. G. TOWNSEND.

Subscribed and sworn to before me this }
 2d day of January, A. D. 1866. }

CHAS. E. MONROE,

Notary Public,

In and for Kalamazoo County, Mich.

STATE OF MICHIGAN, }
 Kalamazoo County. } ss.

Joseph Speyer, one of the members of the dry goods firm of M. Israel & Co. which has been of more than thirty years' standing in the City and County of Kalamazoo, in said State of Michigan, being duly sworn, deposes and says, that he has been acquainted with Emily Mason, of said City of Kalamazoo, for a period of eighteen years and upwards, and knows what kind of a reputation she bears in said city.

Deponent further says that said Emily Mason is a lady of about thirty-two years of age, and is a young

woman of spotless character and reputation, and that full and complete reliance can be placed upon her word or oath.

JOSEPH SPEYER.

Subscribed and sworn to before me }
this 2d day of January, A. D. 1886. }

J. M. EDWARDS,

Notary Public, Kalamazoo Co., Mich.

STATE OF MICHIGAN, }
Kalamazoo County. } ss.

Henry E. Hoyt, formerly Supervisor of the Township of Kalamazoo for a period of over seven years, of the City and County of Kalamazoo, in said State of Michigan, being duly sworn, deposes and says that he is at present superintending the erection of the new Court House and grading the grounds in said city, and has been acquainted with said Emily Mason for a period of thirty years, last past, in said city, and knew her father and family much longer.

Deponent further says that said Emily Mason bears a good and spotless reputation in said City of Kalamazoo, and that she has always resided in said city; and deponent further says that full and complete reliance can be placed upon what Emily Mason may say or swear to.

HENRY E. HOYT.

Sworn and subscribed to before me }
this 2d day of January, A. D. 1886. }

J. M. EDWARDS,

Notary Public, Kalamazoo Co., Mich.

UNITED STATES SENATE.

TO THE COMMITTEE ON THE JUDICIARY:

GENTLEMEN :

The following suggestions touching the matter of the appointment of Mr. O. W. Powers as Associate Justice of the Supreme Court of the Territory of Utah are respectfully offered rather by way of explanation than argument, it being believed that the facts set forth in detail in the proofs filed with the Committee present a much stronger case against the nominee than can any statement of generalities. It is thought, however, that suggestions calculated to secure to the case of the objectors its full probative force, though possibly unnecessary, are not inappropriate.

THE APPOINTMENT AND HOW IT WAS MADE.

How the appointment of Mr. Powers was received by the people of Utah — Gentile or Mormon — I have never heard. As they knew little if anything of him, it is fair to assume that the feeling was one of curiosity coupled with some anxiety. To Michigan it came as a surprise and a shock. The appointment was a fact before it was heard of or thought of by any except a favored few. It is strict truth to say that it was surreptitiously procured. The senators and representatives from Michigan, Republicans and Democrats, knew nothing of it, nor were they ever consulted. The only people who could offer any objections or produce any evidence stronger than the stereotyped letter of recommendation — full of platitudes and generalities — which any one can procure, were carefully and studiously kept in profound ignorance of the scheme until the appointment was an-

nounced. The secrecy and expedition with which the affair was managed will be understood by a careful reading of the affidavit of Mr. N. H. Stewart (pp. 42-45), and the letters of Judges Cooley, Champlin and Sherwood of the Michigan Supreme Court. They show no thought, no deliberation. Everything done by telegraph. Why telegraph? What was the emergency? Judge Champlin is telegraphed for a recommendation. "Do it quick and sign officially." Why quick? Why this precipitancy in a matter of the highest national importance with no pressing emergency demanding extraordinary promptitude? The nation was in no hurry. It was never more calmly deliberate. It needed a lawyer, not a mere attorney. It needed a man of judicial mind and temperament. It needed a man of courage. More than all it needed a man of unquestioned and unquestionable integrity. Has such a man been offered? Are telegraphic recommendations, hastily obtained, sent without consideration, and secretly used, sufficient assurance to the country that due deliberation was had? The President admitted to the writer that the matter alleged in the proofs filed with the Committee had never come to his attention prior to Mr. Powers' nomination. They therefore were not considered in making the nomination. That they would have been furnished to him had there been any publicity given to the affair prior to the announcement of the nomination is sufficiently evident from the character of the objectors and the case made by them. As soon as practicable after the nomination the writer laid this case before the President, with the exception of the letter of Mr. Chas. F. Stuart (p. 1), of December 5, to Senator Edmunds and the affidavit of Mr. N. H. Stewart (p. 42), of December 9. Reasons for thus withholding these two papers will readily occur to any one reading them. The President retained the papers submitted to him until January 8th instant, on which day they were withdrawn for the use of the Committee. At this interview with the President the writer asked him whether he had shown the papers to Mr. Dickinson, and the President admitted that he had so shown them. This question was asked because Mr. Dickinson was the procurer of Mr. Powers' appointment in the manner above related, and had, during the

recess, visited Washington in the interest of Mr. Powers, and while here had urged the President to send the nomination to the Senate. As the writer understands the practice of the Senate in cases like this to be somewhat different from that pursued in the Executive Office, it is deemed but proper to call the attention of the Committee to this exhibition of the objectors' proofs to the opposite side and to add that the objectors have hitherto had no opportunity to examine any of the letters or other documents supporting Mr. Powers' nomination. Mention of this is not made in a spirit of complaint but to suggest equality of treatment.

In the course of some five or six interviews with the President he expressed his regret that he had not the proofs against Mr. Powers prior to making the nomination. He said, also, that he believed that he would send in the name to the Senate and let that body dispose of the matter, etc. From the commencement to the end of the consideration of the objectors' proofs by the President, no issue was made, suggested or hinted upon their truth or upon their effect as evidence of character. We say "character" because it is believed that in this matter character, rather than reputation, is material. Reputation may or may not be a reflex of character.

THE OBJECTORS.

Who are the objectors to the confirmation of Mr. Powers' nomination? Are they obscure, insignificant, selfish, unworthy, ignorant, vicious, of ill repute? How do they stand in Michigan?

CHARLES E. STUART.—Mr. Stuart is an old and honored resident of Michigan, well known and respected from one end of the State to the other. The last time Michigan sent a Democrat to represent her in the Senate of the United States she chose Charles E. Stuart, the friend and associate of her most distinguished citizens, a man with whom Lewis Cass and Alpheus Felch were ready and willing at all times to advise, and of

whom Zachariah Chandler and Jacob M. Howard always spoke in terms of the highest respect. If Michigan has any honorable and patriotic men among her citizens, Mr. Stuart is one of them. He has resided in Kalamazoo for many years, covering the entire time of Mr. Powers' residence in the same place. He is personally acquainted with Mr. Powers and is in every respect competent to testify as to the latter's reputation, character, habits, ability, etc. Mr. Stuart is not a political opponent of Mr. Powers and has no selfish purpose to subserve in objecting to his appointment.

FOSTER PRATT.—Dr. Pratt is well known throughout Michigan as a man of great scientific attainments and as a physician and surgeon of more than ordinary ability. He has resided in Kalamazoo nearly thirty years, and has always been respected, not only by the people of that place, but throughout Michigan. The writer has lived in Michigan over thirty years, has long known Dr. Pratt personally, and was with him a delegate from Michigan to the National Democratic Convention of 1880, at Cincinnati, Ohio. He has yet to hear for the first time anyone accusing Dr. Pratt of doing a dishonorable or even a mean act. Dr. Pratt has been chairman of the State Central Committee and has been placed in other prominent political positions. He has also been connected with various State institutions.

N. H. STEWART.—Mr. Stewart is an attorney and counselor of the State and Federal Courts of Michigan and of the United States Supreme Court, a resident of Kalamazoo and well acquainted with Mr. Powers' character, habits, etc. Mr. Stewart has an excellent legal practice in Michigan and is respected as an able lawyer and an honest man. He has for some time past been local counsel for the Michigan Central Railroad Company. He is well known as an outspoken, truthful man.

J. M. EDWARDS.—Mr. Edwards is a lawyer of good standing in Michigan, and was at one time a partner of Judge Sherwood, now of Michigan Supreme Court.

He is much respected in Kalamazoo and throughout the State. He is a Republican in politics.

S. S. COBB.—Mr. Cobb is an old resident of Michigan and well known throughout the State. He is a Republican in politics and was Railroad Commissioner for the State in 1877 and 1878. The writer was in those years a member of the Michigan Legislature and has a personal recollection that Mr. Cobb was then Railroad Commissioner. He may have held this office in other years, but without further examination the writer cannot positively state what the fact is in this regard. Mr. Cobb has long lived in Kalamazoo and knows Mr. Powers thoroughly.

N. T. METCALF.—Mr. Metcalf is a reputable dentist of Kalamazoo, where he has resided above thirty years. He is acquainted with Mr. Powers, is entirely competent to testify concerning him, and has no reason or motive to speak anything but the truth.

H. C. POTTER.—Mr. Potter is the Under Sheriff of Kalamazoo County and managing partner of the Michigan Scale Company. He is a citizen of good repute and character, and his testimony is entitled to respect and credence.

T. A. COBB and WM. MOTTRAM.—These gentlemen are well known residents of Kalamazoo, of good repute and worthy of belief. They object to the confirmation of Mr. Powers' nomination only through honest and just indignation at the selection of a person for so important a post whom they know to be wholly unfit therefor, and whom they, with the other prominent gentlemen above named, do not hesitate to brand as personally and professionally dishonest and dishonorable.

MISS EMILY MASON.—This lady has been a resident of Kalamazoo nearly twenty years. Her good character and good reputation cannot be successfully questioned. The fact that Mr. Powers' friends, since the propriety of his appointment has been in question,

have attempted to settle Miss Mason's claim, ought to convince anyone of the truth of her statement; that she is entitled to belief is put beyond peradventure by the supporting affidavits of Messrs. Townsend, Speyer and Hoyt, who severally testify to Miss Mason's truthfulness and good repute.

ALLEN POTTER. — This gentleman, now dead, represented in Congress the district in which Kalamazoo was then situated. His truthfulness and integrity were beyond question. Though, by reason of his death, he is not a formal objector to Mr. Powers' appointment, he may well be considered as silently protesting against that sort of political action which obliterates all distinction between honesty and dishonesty, and bestows upon the unworthy the commendation and reward due only to the meritorious.

HENRY J. BROWNELL.—Mr. Brownell has been a resident of Kalamazoo County about forty-four years, excepting a period of about three years, during which he was in the military service of the United States, and about two and one-half years, during which he was managing a farm and hardware business in the Territory of Dakota; he has been constable, deputy sheriff, under sheriff and deputy U. S. Marshal. He has known Mr. Powers from the time of the latter's arrival at Kalamazoo, and is thoroughly conversant with the Emily Mason claim.

DURFEE E. WILCOX.—This gentleman has lived in Kalamazoo County about seventeen years, during which period he has owned and occupied a farm in the township of Cooper. He has known Mr. Powers from the latter's boyhood to the present time, and is quite well-informed respecting his character, etc.

JOHN REA.—Mr. Rea has been a resident, property-owner and merchant of Kalamazoo over thirty years and has known Mr. Powers for a period of ten years and upwards.

HENRY W. BUSH.—Mr. Bush has resided in Kalamazoo County over forty-four years. He has been several times supervisor, twice elected register of deeds and is now county superintendent of the poor. He is personally cognizant of a considerable part of the Emily Mason affair.

J. W. CHAMPLIN.—Judge Champlin resides at Grand Rapids, Michigan, and is one of the Justices of the Supreme Court of that State. He is not, strictly speaking, an objector. He was, however, asked to recommend Mr. Powers, and declined for reasons set forth in his letter. It has been asserted by Mr. Powers' friends in Washington and Michigan that his nomination was endorsed by the entire Supreme Court. It seems that these representations are false.

T. R. SHERWOOD.—Judge Sherwood is one of the Justices of the Supreme Court of Michigan.

T. M. COOLEY.—It is hardly necessary to introduce to the Committee the author of "Constitutional Limitations." His name cannot be otherwise than "familiar in their ears," and nothing need be said here to add to his justly high repute as a learned jurist and patriotic citizen.

OBJECTIONS TO MR. POWERS' APPOINTMENT.

"The appointment * * * is one not fit to be made." "Both personally and professionally he is a dishonest and dishonorable man."

This is charged by Messrs. C. E. Stuart, Pratt, N. H. Stewart, Edwards, S. S. Cobb, Metcalf, Potter, T. S. Cobb and Mottram, all of whom know that the charge is true or false. There can be for these gentlemen to stand upon no debateable ground of mistake. They have wintered and summered with Mr. Powers. Their unqualified reputation and high character, coupled with

ample opportunity to ascertain the truth, must convince all that they are moved by their own knowledge of facts, and not by the mere general opinions of others. Testimony from such a source, supported by circumstantial proof under oath, should outweigh all general recommendations, not infrequently given to secure future favor or to avoid personal ill-will, and should stand as a complete impeachment of any denial of the charge by interested persons.

The unreliability of general recommendations is plainly illustrated in this case. Judge Sherwood is telegraphed for a general recommendation, and, apparently without much thought, forwarded one by wire. He seems never to have investigated the matter before this, as it appears from his letter that when he did, he changed his mind and is now satisfied that he made a mistake.

The fact is that this sort of recommendation can be procured from anyone, and in almost any quantity, and they are largely lacking in sincerity. The bulk of them come from persons who hope for future benefit, or who fear the ill-will of their neighbors, or, who are ignorant and should say nothing, or, who know and should say what they do not.

Judge Cooley was entrapped into giving a recommendation through his reliance upon the strong and positive statements of one whom he supposed knew Powers, and would not mislead him. Yet when he next met the same party the latter astonished Judge Cooley by saying to him, "Powers ought not to have been appointed. I felt mean to have to write that letter to you, but it was pressed upon me with such persistency I did not know how to refuse."

Since then, Judge Cooley has given some attention to the matter, and writes in substance that he is satisfied that Mr. Powers' appointment is an improper one and that his confirmation would be a public misfortune. It is proper to state in this connection that the letters from Judge Cooley to the writer were wholly unsolicited. After their receipt, Judge Cooley called upon the writer at Detroit, and orally reiterated the views given by him in writing.

As bearing to some extent upon the unreliability of

recommendations, it is respectfully suggested that there will probably be found upon some of Mr. Powers' recommendations the names of men who in 1879 started a movement to have him disbarred.

INSULT TO JUDGE SHIPMAN.

The Michigan State Asylum for the Insane is a State institution, and is located in Kalamazoo. Mrs. Newcomer was sent there by relatives and friends, and Dr. Vandusen, as the State officer in charge of the asylum, received her as a patient. Mrs. Newcomer subsequently brought suit to recover damages for this action, alleging assault and battery, false imprisonment, etc. The plaintiff recovering a verdict, the case went to the Supreme Court on error wherein it was reversed, the Court dividing equally upon some important questions, but agreeing upon a reversal. The Local Circuit Judge, Mr. Hawes, requested Judge Shipman, of Coldwater, and of another Circuit, to try the case, which the latter did.

Judge Shipman was, and is an excellent lawyer and a courteous gentleman, and has been the nominee for Justice of the Michigan Supreme Court. His integrity is unquestioned, and he presided upon this trial with marked ability. Upon this trial the plaintiff was defeated, and the case ended. Mr. Powers was one of the plaintiff's attorneys. After the trial, while Judge Shipman was conversing with several gentlemen of the bar, Mr. Powers interposed in a most abrupt and rude manner, and said to Judge Shipman, "Well Judge, you and I are on an equal footing now. I thank God that our side did not send for you. We didn't want you. The other side wanted you and got you. They had you and they have used you and now you can go home." Powers' deliberate purpose to grossly insult Judge Shipman was further executed by a continuation of this abuse in a communication to the *Kalamazoo Telegraph*. Much indignation was excited by Powers' flagrant conduct and an attempt was made to disbar him. Wilfully

and deliberately insulting an upright judge and courteous gentleman by publicly and maliciously charging him with dishonesty and corrupt conduct may not seem a grave offence, but it is certainly an index of the character of the man who does it, and of the man who did it.

THE WILCOX MATTER.

Mr. Durfee E. Wilcox, whose residence, character, standing, etc., are above explained, employed Powers professionally in 1878. When he, Wilcox, had become fully entangled, he was turned out of Court through Powers' incompetency, and was obliged to retain another counsel who, by beginning anew, succeeded. Powers collected moneys belonging to Wilcox, but did not disclose the fact of such collection. Wilcox ascertaining that such moneys had been collected (but never through Powers), called for the same, but found that Powers had simply spent the moneys. Wilcox has never received any of these moneys from Powers to this day. He had occasion to thoroughly test Powers as to veracity, honesty, integrity and reliability, and found him wanting in all. In 1880, Powers having been employed by Wilcox, as his attorney, collected a judgment belonging to the latter and appropriated the proceeds thereof—\$115.00—to his, Powers', own use. Having learned through other means that this judgment had been collected by Powers, Wilcox demanded the amount due to him and found that Powers had spent this collection also. Powers has never to this day paid the amount due to Wilcox upon this collection. Powers has either appropriated or been the means of losing something like \$500 of Wilcox's money.

THE REA CASE.

John Rea, becoming, in 1881, involved in litigation with his wife, retained Powers to protect his property,

rights and interests against what he believed to be her unjust claims and demands. Powers advised him that he was in the right and would certainly be victorious, and made an express contract with Rea to take the case and carry it through for \$100. Rea alleges that Powers' conduct in the matter is only reconcilable with dishonesty. It seems that Powers led him on until Rea became so involved as to be in great danger of losing all the property he had. Powers spent days and weeks in filling the record with useless and irrelevant testimony at great cost to Rea, and, finally, when the case came to a hearing in the Circuit Court, the Judge, Hon. A. J. Mills, severely reprimanded Powers for pursuing such a course, and by dismissing the case left Rea where he began, except that he was nearly financially ruined. The case was appealed to the Supreme Court, and Rea, being now unable to employ other counsel, was compelled to and did argue the case himself in his own behalf. On appeal, in deciding the case, the Supreme Court used the following language: "The record is an extraordinary one." The careful and conscientious Circuit Judge says, in an opinion filed by him: "I cannot pass over in silence, and do my duty, the unlawyerlike wrangling which took place between counsel during the taking of testimony in this case. This record is full of unprofessional statements taken down by the Commissioner at the request of counsel, and of objections which are not only burdensome and expensive to the litigants but are scandalous in the extreme. The Commissioner should have declined to have recorded the same. It must be further added that the proofs as taken are very unnecessarily prolix and cumulative and would, in any other than a divorce case in which one of the parties has no property, be met with a decree charging the party or parties responsible therefor with the costs of taking the same. This is a very moderate statement. The record is at least five times as voluminous as was needful for bringing out the material facts."

THE EMILY MASON CLAIM.

Emily Mason, aged about twenty-five years, father dead, was, a short time prior to 1878, left a legacy by her grandfather, Anthony Mason, who had recently died where he had long lived, in Orleans County, N. Y. A portion of this legacy had been paid to Miss Mason, and in April, 1878, there was an unpaid balance due her in the hands of the personal representatives of Anthony Mason of \$934.65. A portion of this balance was secured by mortgage and the remainder thereof consisted of \$483.50 cash. Miss Mason arranged with Powers to collect this money for her, and upon his request gave him an appropriate power of attorney. It was understood that whatever was due could be collected without difficulty or delay as the estate was involved in no litigation or complication of any sort, and that all that would be required to be done was the signing of proper receipts. Powers said that the place of settlement was near where his parents resided, whom he occasionally visited, and being desirous of doing so soon, all the charge he would make Miss Mason would be simply his traveling expenses, from Kalamazoo, Michigan, to Medina, N. Y., and return, upon such occasions as he might be required to go to the latter place for the purpose of collecting the legacy. During the time between the date of this arrangement and January 1st, 1879, Miss Mason met Powers frequently and asked him whether he had collected the money due her, and to her inquiries he always replied that he had not, that there were some difficulties in the way and that the money had not been paid over to him. Miss Mason, after a time, discovered a disposition on Powers' part to avoid her. On several occasions she called at his office and was informed that he was out or could not see her. She became alarmed at Powers' singular conduct and concluded to investigate for herself. She wrote to the Surrogate of Orleans County, who gave some particulars, but referred her to the administrators of her grandfather's estate for information respecting the payment of her legacy. She wrote to one of them, but his reply not being entirely clear, she again wrote and learned that Powers had collected her money but had

left the mortgage which he should have obtained for her and delivered it with the money promptly after receipt. After some further correspondence she found that Powers had collected the \$483.50 cash, \$160 in the preceding June, and \$323.50 on Sep. 5th, 1878. It was now near March, 1879, and Miss Mason had been obliged to employ another attorney. Finally, about March 8th, Miss Mason, through her attorney, became possessed of full particulars of Powers' dishonesty and falsehood. After obtaining this information she again sought to reach Powers by calling at his office repeatedly, and upon each occasion was told he was out. She was wholly unable to find him until by accident she met him at the postoffice and there demanded an interview. He finally agreed to meet her at his office soon thereafter. Prior to this Mr. Brownell had, on behalf of Miss Mason, also asked Powers if he had collected her money, and Powers said he had not collected a cent. He also said that the money on hand was ready to be paid over, but there was some technicality about a small mortgage that had to be arranged before the money on it could be paid, and that he would not take any part of the money until he could collect all. Brownell then said, "You had a power of attorney, and that being so, why did you not take the money on hand and bring that home to Miss Mason?" Powers replied, "Because I didn't wish to take any until I could take the whole." Soon after the meeting between Miss Mason and Powers at the postoffice, she and Brownell called upon Powers at his office. Powers was there and seemed agitated by their action. Miss Mason then confronted him with the evidence of his having long before collected her money which he had denied having received. Powers then admitted that he had collected her money and confessed that he had lied to her about it. He said that he had spent it and could not pay it, but would try and raise it. He begged them not to expose him and prosecute him as it would ruin him and his reputation. He further told Miss Mason that, if she would not prosecute or expose him, he would borrow the money of a friend and pay her every cent due her. Miss Mason subsequently recovered from Powers \$292.40, leaving ac-

cording to Powers, due from him a balance of \$40.98. It had cost Miss Mason, between her two attorneys, to collect her little legacy of \$483.50 from her grandfather's estate, the administrators of which were perfectly willing to pay it on demand and had done so, *one hundred and fifty dollars*, and that after conduct which in Michigan is not only unprofessional but criminal. But even then she did not get all. Powers still owed her a balance of \$40.98, which he charged her for collecting but did not pay over. He, however, went before a Justice of the Peace on Dec. 19, 1876, *nine* months afterward, and confessed judgment therefor, which he knew was of less value than the claim. There were remedies upon the claim which could not be used in enforcing the judgment. The costs of this proceeding were taxed at \$1.00 in favor of Miss Mason. Execution was issued on this judgment and returned unsatisfied Aug. 25, 1880. Powers did nothing further until Mr. Bush, on behalf of Miss Mason, about Sep. 14, 1885, after Powers' appointment, demanded payment of the unpaid judgment, and succeeded in collecting \$20. Bush told Powers that Miss Mason needed the money and that unless the balance was paid the judgment would be sued over in Utah. Powers promised to send the balance by Oct. 1, but did not do so nor did he send any of it. The collection of this judgment is now probably barred by the statute of limitations. Powers, however, did not wholly forget the claim as, since the question of his confirmation has been agitated, he has endeavored, through his Kalamazoo friends, to harass Miss Mason about the matter, and on Dec. 23d last, during the congressional recess, Powers, by Mr. R. F. Hill, offered Miss Mason what he claimed to be \$38.00 upon condition that she would sign a paper writing which he said was a receipt. She told Hill that she would not accept and sign the paper without consulting her agent, but he could go and pay the money into Court. Hill went away and Miss Mason has not yet received her money. The writer met Hill in Detroit during the present month of January, and the latter volunteered the substance of what had occurred between him and Miss Mason in respect to this offer of payment as above related, though Miss Mason had already fur-

nished an affidavit of the facts. The writer asked Hill why he made the offer just then. Hill replied that it was to shut her mouth. The relation of the facts of Miss Mason's case ought to be a sufficient argument thereon.

MRS. MASON'S CLAIM.

The foregoing was not enough. About the time Powers took charge of the Emily Mason claim, her mother, Mrs. Mason, put into the hands of Powers & Daniels, the law firm of which Powers was the senior member, for collection, a small claim of \$20, which was collected by them, or one of them, and has never been accounted for or paid over to this day.

If Powers should claim, as he has heretofore, that his partner, Daniels, took any of these moneys, we respectfully call attention to the proof on file showing that when Powers & Daniels dissolved their partnership, Powers had overdrawn his share several hundred dollars and gave his notes to Daniels to settle up the matter. These notes have been admitted by Powers to be valid, though he pays them no more promptly than he does other claims.

THE SHIPLEY AFFAIR.

Mr. John Shipley, of Rochester, N. Y., formerly of Pultneyville, N. Y., an old gentleman of 64 years, knew Powers from boyhood. In the summer of 1883, Powers approached Shipley and requested a loan of \$1000, to be secured by a second mortgage upon a house and lot in Kalamazoo, Mich., which he, Powers, represented that he was about to purchase for a home and had nearly completed the negotiation therefor. Powers said that he was to have it for \$1,700, that he would borrow \$700 from David Fisher, or his wife, Mrs. Sarah C. Fisher, and that he had promised to give them a first

mortgage on the same land. Powers promised him that the Fisher mortgage should not exceed \$700, and, relying upon this, Shipley advanced him \$1,000 upon a second mortgage which was to be subject to the Fisher mortgage of \$700 only. The Shipley mortgage, with its accompanying note, was due on demand. Payment thereof was demanded Dec. 23, 1884, but Shipley has been able to get only one year's interest. Finding it necessary to enforce his claim, Shipley began to investigate, and found that Powers had simply been deceiving him. Powers having obtained the \$1,000 from Shipley before any papers were made, borrowed \$1,100 from Mrs. Fisher (instead of \$700) and gave her the first mortgage on the house and lot, thus compelling Shipley to meet \$400 to protect himself, which he had not bargained for, and which, in fact, he had bargained against. The deed of Tompkins *et. al.* of this land to Powers is dated Sept. 15, 1883, and recorded Sept. 20, 1883; consideration \$1,700. The first mortgage of Powers to Fisher is dated Sept. 20, 1883, and recorded on the same day. The mortgage to Shipley is dated Sept. 20, 1883, but recorded Sept. 22, 1883. Powers has paid nothing upon the first mortgage except some interest, and proceedings to foreclose it have been threatened. Shipley now finds himself obliged to pay Powers' \$1,100 debt to Fisher in order to save anything for himself. As the property is not worth much, if any, more than the consideration in the deed to Powers, viz. \$1,700, Shipley is compelled to loan Powers in all \$2,200 upon wholly inadequate security, \$400 of which Powers gets by actual fraud. As Powers, in all human probability, represented the security as adequate, he can fairly be believed to have deceived Shipley in this direction also. Shipley is embarrassed in his efforts to protect himself by his own financial circumstances, and Powers is wholly irresponsible financially.

THE ALLEN POTTER CASE.

Hon. Allen Potter resided in Kalamazoo County for many years, and died there in 1885. He was elected to

Congress in 1874, and served one term. Shortly before Mr. Potter left Kalamazoo for Washington to take his seat in the House of Representatives he was approached by Powers, and was by him solicited to take stock in a company or corporation which Powers represented was then being gotten up for publishing and conducting a newspaper at Kalamazoo, and which was to be Democratic in politics. Powers represented to Mr. Potter that the company was to be organized with a capital stock of \$12,000, of which \$6,000 was to be taken up by Mr. Shakspeare, the editor and publisher of the *Kalamazoo Gazette*, who had the plant, the purchase of which had been talked of, and \$6,000 to be taken by various Democrats, of which Mr. Potter was solicited to take \$1,500; that the scheme was being pushed with vigor by earnest Democrats with every prospect of success, and that he, Powers, would be the political editor of the newspaper. Mr. Potter, being urged by Powers to subscribe for the stock, said to him shortly before he went to Washington that he, Potter, would not then subscribe, but would wait, and would take the last \$1,500 of unsubscribed stock of the company when its organization should be fully perfected and its officers appointed, and that if that point in its organization should be reached before his return from Washington, he, Powers, might write to him, and he would send the cash for the last \$1,500 of stock. Mr. Potter went to Washington, and not long after his arrival, he received a letter from Powers, wherein the latter stated that the stock of the new company had been all taken and paid, except the last \$1,500 thereof assigned to Mr. Potter; that the company was organized and its officers duly elected, and that it only remained for Mr. Potter to forward his \$1,500 to complete the organization. Mr. Potter had no suspicion of perfidy, and believed implicitly in Powers' statement. He therefore sent word to his banker at Kalamazoo, to pay the \$1,500 to Powers, and it was accordingly paid to him. Mr. Potter felt no concern for his money, supposing everything to be as represented, and remained in Washington during the remainder of that session of Congress untroubled by any doubt of Powers' personal honesty. On his return to

Kalamazoo at the close of the session, Mr. Potter inquired after the condition and prosperity of the company whose stock he supposed he had purchased. He then first learned the truth. There was no stock. He had secured none. No stock had been issued. No one had subscribed for or taken any. No one had paid any money, except himself, to Powers. There were no officers elected. There was not even a company organized. He had been completely duped. Powers had obtained the money and had converted it to his own use. He has never repaid it to this day. He, however, did not forget that he had it. In 1880, Powers, by somewhat peculiar political methods, obtained the Democratic nomination for Congress for the 4th district of Michigan, and was told by several leading Democrats, who were more or less familiar with the facts above related, that they would not support him. Powers then invited Messrs. Mason, Metcalf, Dudgeon, De Yeo and Pratt, all of Kalamazoo, to meet him at Mr. Mason's office for the purpose, as he said, of explaining his conduct in this transaction with Mr. Potter, and to take the advice of these gentlemen as to whether he ought to accept the nomination for Congress. The conference was held, as called, Sept. 3, 1880. In the presence of the gentlemen named, Powers admitted the truth of the Potter transaction in substance as above related. He urged, however, that Mr. Potter had condoned the offence by taking his, Powers', note and had, by so doing, converted the matter into a loan, and that others, therefore, had no cause of complaint against him. Powers also informed these gentlemen that he had used the money he had obtained from Mr. Potter partly to settle a "woman scrape" in which he had been involved, partly to pay a heavy printing bill and partly to pay the expenses of a trip to New York, and that about \$700 or \$750 he had loaned to Mr. Shakespeare above mentioned and had taken from him a chattel mortgage upon the stock and machinery of his newspaper, but that when he, Potter, came home and began to inquire into the matter as above related, Shakespeare, fearing a legal investigation and garnishment of the money in his hands, borrowed, with Powers

as security, sufficient money to repay Powers and take off the chattel mortgage held by the latter. These gentlemen advised Powers that the nature of his conduct with Mr. Potter had not been changed by the failure of the latter to prosecute him, nor by Mr. Potter's taking his note, which had been received by a Mr. Wood without authority, and they further informed Powers that under no circumstances would they support him for Congress, nor for any other office of honor or profit. To further emphasize this advise, they sent him a written communication (a copy of which the Committee have) in which they state, among other things, that they have carefully and deliberately considered the whole situation connected with his candidacy, and feel impelled by the facts and circumstances *established* to advise him to peremptorily decline the nomination; that it was their conviction that the democracy could not afford to defend against personal charges involving the integrity of its candidates: that they could not remain silent respecting the methods adopted to secure to him the nomination, and that while he claimed to be ignorant thereof, the methods used and the result obtained could not be easily explained upon that hypothesis. They concluded by asking him to relieve the Democratic party of that District of all trouble in that behalf by peremptorily declining the nomination. Powers, notwithstanding his pretended desire for advise, continued in the field and was very emphatically repudiated by the electors of the District.

POWERS' POLITICAL PRINCIPLES.

Powers has been something of a political gymnast, having appeared in the *role* of Republican, Temperance Crusader, Liberal and Democrat, since the year 1872, and he seems to have been no more reliable in any than that of a temperance advocate.

POWERS' ANTI-MORMON RECORD.

Some claim has been made by Powers and his friends that opposition to his confirmation comes from Mormon sources. This pretence is as false as those he used to get Allen Potter's money. This claim was deliberately manufactured for the purpose of fraudulently aiding Powers by making him appear in the light of a martyr, or as one persecuted by persons obnoxious to the United States authorities. It was started in Detroit and sent from there to Washington for Powers' benefit. It is but an attempt to humbug, by playing upon the feeling of antagonism to Mormonism, just now somewhat extensively aroused. The fourth paragraph of the writer's affidavit upon this matter ought to set it at rest. It is as follows:

"That affiant has not been and is not now retained or employed in this matter, and no money or means have been contributed to affiant's retainer or employment therein, directly or indirectly, by the Mormon Church of Utah, or anywhere, nor by any association, society or aggregation of Mormons, nor by any Mormon interest, nor by any Mormon or any number of Mormons; that no advice, aid, counsel or assistance in this matter has been afforded, received or obtained from any Mormon source whatever, and that affiant and all persons by him represented have no sympathy with, or friendship for the Mormons, their church, their institutions or their practices."

But Powers' claim to any support or sympathy in this regard is wholly baseless. He has done nothing but make a ridiculous decision in a matter of the admission of a professed Mormon to United States citizenship, holding that to be judicial action, which the ordinary law student knows is nothing of the kind. Of the result we do not complain, but the ratiocination is simply laughable; that this action was simply for the purpose of advertisement, is too plain to need argument.

But what else has he done?

The Daily Tribune, of Salt Lake City, a Gentile paper, of October 3, 1885, contains the following:

"An Ogden Democrat writes *The Daily Tribune*, asking what we think of Judge Powers sending a present to an editor, who is now under an indictment in the Judge's own Court, and who has shamefully traduced and lied about three or four officers of the same Court. We think the act reveals want of dignity, self-respect and honest pride on the part of Judge Powers, which is as surprising as it is unexplainable."

The Chicago Tribune, of October 3, 1885, contains the following:

"Soon after Judge Powers became Associate Justice of Utah, he was assigned to the First District. Last spring, Editor Hemingway, of the Mormon *Ogden Herald*, published libelous articles about the members of the grand jury, the Court and other federal officers. Powers instructed the grand jury on libel, and they indicted Hemingway for criminal libel; the case is to be tried in November. Hemingway was married last Tuesday. Among the presents reported by the Mormon papers was a handsome silver tea-set from Judge Powers, with compliments. This causes much comment and criticism among anti-Mormon citizens."

Hemingway has since been tried and convicted by Judge Zane.

Since Hemingway's conviction, an article laudatory of Powers has appeared in the Mormon *Ogden Herald*, edited by this same Hemingway. The truth of the article, which from its circumstantiality could only have emanated from Powers himself, may well be judged by the fact that instead of Powers' situation being as therein sought to be represented, his wife had to, and did in fact, leave him on account of his ill-treatment of her, and she still refuses to live with him. He was even suspended from the Masonic Lodge, to which he belonged, for non-payment of the ordinary dues, and since his nomination has been making an effort to be restored.

It seems plain that Powers is not in great danger of Mormon attacks, and we have yet to learn of Gentiles in Utah who fear the consequences of his early departure.

WHY POWERS WAS SELECTED.

The procurer of this nomination is said to be a Mr. Dickinson, of Detroit. He claims that he procured it, and it is generally conceded that he did. It is certain that no representative of the people of Michigan, or of any part thereof, had anything to do with the matter or was ever consulted in regard thereto. That Powers' appointment was even under consideration was unknown to the people of that State until they were startled by the announcement that it was made. Therefore, the cause of the selection of Powers must be found in the motives of the procurer of the nomination. With Mr. Dickinson's merits and demerits—and he has both—we have no concern. It is sufficient to say here that the people of Michigan, in whole or in part, have never chosen or asked him to represent them in any capacity and that his action in the premises was individual and unsolicited.

What, then, does the procurer of Powers' nomination say of it?

To the writer, who said the appointment was not a fit one, he replied that he thought Powers would redeem himself.

Why redeem? Redeem from what?

At another time the writer told him that there was nothing personal against him in the writer's objection to Powers. He replied that his enemies would recognize this as an attack at his most vulnerable point.

Why the *most* vulnerable? Why vulnerable at all?

To a gentleman, who can be produced, he said, in substance, that if he had to do it over again he would not recommend Powers.

To still another gentleman, who can also be produced, he stated, in substance, that the appointment was not a proper one.

To Mr. N. H. Stewart, of Kalamazoo, whose affidavit is on file with the committee, Mr. Dickinson stated, in substance, that Powers was not a fit man for the place; that he was a disturbing element in the party; that he was not to be relied upon and that he thought it a good

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